

GUEST WORKER PROGRAMS

Y 4. J 89/1:104/54

Guest Worker Programs, Serial No. 5...

HEARING
BEFORE THE
SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

DECEMBER 7, 1995

Serial No. 54



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

23-561

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-052630-2



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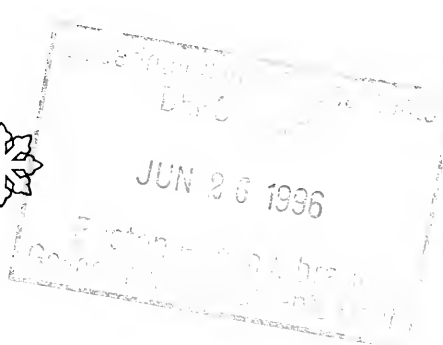
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GUEST WORKER PROGRAMS

THURSDAY, DECEMBER 7, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 2226, Rayburn House Office Building, Hon. Lamar Smith (chairman of the subcommittee) presiding.

Present: Representatives Lamar Smith, Elton Gallegly, Sonny Bono, Ed Bryant of Tennessee, Howard L. Berman, and Xavier Becerra.

Also present: Representatives Saxby Chambliss, Jack Kingston, and Sam Farr.

Staff present: Cordia A. Strom, chief counsel; Edward R. Grant, counsel; George Fishman, assistant counsel; Judy Knott, secretary; and Marie McGlone, minority counsel.

OPENING STATEMENT OF CHAIRMAN SMITH

Mr. SMITH. The Subcommittee on Immigration and Claims will come to order. I thank you all for being here today. Our hearing is on the subject of agricultural guest worker programs.

Since the beginning of the bracero program during World War II, the United States has had one or more guest worker programs operating to provide seasonal agricultural labor for the Nation's farms. Millions of workers have come temporarily, and of course many permanently, to America under these programs. These foreign workers have insured successful harvests. In fact, the farmers most reliant on foreign workers, fruit and vegetable growers, have prospered greatly in recent years. But, for whatever reason, aliens are just about the only people entering the occupation of seasonal, agricultural work. Some have argued that this is because of poor wages, others that Americans just won't do this type of work. I hope today that we can become better informed about these issues.

We will also discuss the Immigration Reform and Control Act of 1986 which legalized over 1 million illegal alien farm workers, created the H-2A guest worker program, and was supposed to halt illegal immigration. What effect has that act had over the last decade on the American agricultural labor force and American farms?

Lastly, we will hear about the future of agricultural guest worker programs and under what, if any, scenarios they should be considered.

I look forward to hearing from all of today's witnesses who are all experts in their own right. Before we get to opening statements

by other members who are here, let me just mention a couple of points and make an announcement.

First of all, the ranking minority member of this subcommittee, John Bryant, has been detained for a few minutes and will be here shortly and will be in and out. He faces, as other members of this subcommittee face today, a number of conflicts. Elton Gallegly just told me he has two markups in another subcommittee and a full committee.

I know that today, unfortunately, four subcommittees of the Judiciary Committee are meeting, so we have a lot of competition, and members will be coming and going, but I am pleased that we are starting off with four members present right now.

The second point is that I would ask our 15 witnesses today, and we obviously have much ground to cover, to limit their remarks to 5 minutes, as I would ask the members up here to limit their questions to 5 minutes. I will try to strictly enforce this rule so that we can get through the four panels that we have and try to end at some reasonable time this afternoon.

But, again, welcome to all. This is an important subject. There is much to learn. There is much to discuss, and I appreciate the interest.

We will go now to the gentleman from California, Mr. Berman, for his opening remarks.

Mr. BERMAN. Well thank you very much, Mr. Chairman. And I normally don't do this, but the subject matter of this hearing is very important to me, and I do have an opening statement.

But, first, I guess I want to say that I want to particularly compliment you. Generally, as you know, I think you are a very fair chairman. We have some disagreements, we have some agreements. But the hearing you put together today—in the 12½ years, 13 years now that I have been in Congress, we have had a number of hearings on this subject very specifically and generally. I have never seen a greater effort to put together a balanced representation of witnesses that cover all aspects, as well as outside experts on this subject, than you have done today. And you and your staff, I think deserve a tremendous compliment.

Mr. SMITH. Thank you.

Mr. BERMAN. And by and large, those were democratically-run hearings.

Mr. Chairman, the Federal Government is finally trying to gain control of our borders. But no sooner has the effort gotten serious, then the cry has gone up from agribusiness that if it can no longer rely on a steady stream of undocumented farmworkers, the crops will rot in the field. That claim is false. The U.S. Commission on Immigration Reform, chaired by Barbara Jordan, had it exactly right. They rejected the very claims of agribusiness which I expect to hear today, and concluded that an agricultural guest worker program, quote, "is not in the national interest and would be a grievous mistake." The suggestion that there is an impending shortage of U.S. farmworkers is a falsehood foisted on the public and on the Congress by agricultural employers who prefer foreign farm workers. Guest workers, no less than the undocumented, are powerless to prevent inhumane and illegal wages and working conditions because they are fired and deported if they challenge those abuses.

Let's examine the facts. Numerous studies of the agricultural labor market since enactment of IRCA, the 1986 law, have found, without exception, a surplus, a large surplus, of agricultural labor, evidenced by massive unemployment and underemployment among farm workers.

Farmworkers average only 29 weeks of work annually, and earn only \$5,000 per year. Any effort to increase the labor supply by weakening the protections in the current H-2A program, or creating a new guest worker program, would further impoverish American farmworkers and reduce the labor costs of agricultural employers, which is the growers' precise purpose, I fear, in seeking a new or revised guest worker program.

Growers insist that the removal of undocumented workers from agriculture, the tougher enforcement of employer sanctions, will create shortages. But, if true, this is an open acknowledgment of what we all know. Agribusiness has violated our immigration laws by employing thousands of undocumented workers. They may try to claim a safe harbor today by asserting that document fraud makes it impossible for them to know whether a worker is in the United States illegally. We have Mr. Gallegly and others who are working on things to deal with that particular problem. But, what we do know about agriculture is that they are taking great pains not to know. That is the reason why since the enactment of IRCA we have seen an absolute explosion in the use of farm labor contractors by growers seeking to insulate themselves from liability for violations of employer sanctions.

We've been down this path before of bowing to the special pleading of the farm lobby. In 1986, and I was heavily involved in it, Congress created a special seasonal, agricultural worker program which resulted in the legalization of 1.1 million undocumented farmworkers, the SAW program. Those people legalized; they became Americans. The notion that Americans won't do this work is really a canard. Reliable DOL data established that most of the SAW's have remained in agriculture. Some have left because of terrible wages and working conditions. But the way to rectify that condition is for the growers to compete for their labor by improving wages and working conditions. And don't forget that we are about to enact major welfare reform legislation placing a time limit on the receipt of cash assistance after which heads of household will be required to work.

Can it be seriously suggested that at the same time that Congress is insisting that thousands of unskilled Americans leave the public dole, we should import thousands of unskilled foreign workers for jobs that Americans could fill? Underlying the argument for an agricultural guest worker program is the notion that farmworkers must be forever doomed to poverty and inequity. Why? Where is it written in this free market economy that agricultural employers need not improve wages and working conditions to attract and retain an adequate supply of labor? Farmworkers should be able to look forward to the day when growers feel sufficient pressure from the good old laws of supply and demand to offer better pay, longer employment, and meaningful benefits. Farmworkers have suffered enough. Let's not make it worse with a new or revised guest worker program. To do so would hurt American work-

ers and reward the very industry most responsible for the continued flow of illegal immigrants into this country. I can't believe my colleagues want to do that.

Thank you.

Mr. SMITH. Thank you, Mr. Berman. Mr. Gallegly, the gentleman from California, is recognized.

Mr. GALLEGLY. Thank you, Mr. Chairman, and thank you very much for calling this hearing. And I look forward to hearing from the distinguished witnesses that will be here today.

I just have a few observations to make related to the agricultural guest workers. I think it's obvious why we are here today, and we're here because there are an estimated somewhere between 50 and 80 percent of those that are working in our fields across the Nation who are in this country illegally. In fact, the Jordan Commission that testified in this very room before this committee went on record publicly that by their estimates conservatively a minimum of 50 percent of all of the farmworkers are here in the country illegally.

We're here because Congress is about to pass one of the toughest bills on illegal immigration in this country's history. And we're here because the combination of those two simple truths have a whole range of people worried about the future. I look forward to the hearing of the testimony today and to begin to form some of my own opinions on the issue. Primarily, I want to find out if there is going to be a need for a temporary ag worker program in the wake of immigration reform. If there is such a need, and if meeting that need does not come at the expense of the American workers, then I think we should all get together on a program that is fair, protective, and practical.

We know that the existing H-2A visa program is not workable in its current form. The process is too time consuming and cumbersome to serve as a reliable source for agricultural labor. On this point, the statistics really tell the story. Out of the roughly 2.8 million seasonal agricultural workers in America last year, only about 15,000 came through the H-2A program. That's less than one-half of a percent and certainly that's an indication that it is nowhere near adequate.

Assuming we're able to identify a need for an agricultural guest worker program, my primary focus is going to be on insuring that the workers who take part in the program are treated fairly, that they do not become a burden to the taxpayers when they are here, and that they return to their homelands at the conclusion of their work. Those are the primary goals that I have, and the questions that I'm going to be asking of our guests today to try to come to a conclusion as to whether or not we really need a program or not or if we have enough domestic work to provide the needs for agriculture.

Thank you very much, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Gallegly. Mr. Becerra, the gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

I, too, would like to second what Mr. Berman has said, and thank the chairman for such an extensive and also a very even-

handed opportunity to address the issue of a guest worker program for this Nation.

I must say I do have some concern in the way I understand some of the preparations of the hearing were handled with regard to Members. I understand that there was a request by some Members to testify at the hearing. My understanding, for the 3 years I've been in Congress, is that normally a Member is extended the courtesy of being able to testify.

Mr. SMITH. If the gentleman would yield for a minute—I neglected to say a while ago, and should have, that we are going to be having a joint hearing with the relevant subcommittee of the Agriculture Committee for the specific purpose of allowing Members and others to testify. Clearly, Members need to be accommodated. I will always attempt to do that, and we have done so by having that day next week.

Mr. BECERRA. I appreciate the chairman's words, and I suspected that would happen since the chairman has always been fair in that regard, and I think it is important that Members who wish to express themselves on particular issues have that opportunity. And as far as I knew, that was always the case any time a Member wished to have the opportunity to present some testimony.

I'm disappointed as well that, as thorough as we are being provided an opportunity to have a hearing on this matter, that several of the individuals who will be testifying, I suspect, in support of a guest worker program, mostly from the growers' side failed to submit written testimony to give us an opportunity to read their testimony prior to having them orally come before us. I think it's unfortunate because, obviously, it's difficult in 5 minutes for them to provide us with a full understanding of their concerns and their arguments in support of a program. Perhaps once we have heard their testimony, if they have not yet submitted something in writing, they'll do us the courtesy of providing something in writing. That would be very helpful.

On the whole issue of a guest worker program, I'd like to keep an open a mind as possible, but it's difficult when I take a look at the fact that in this country we have unemployment that is somewhere around 6 percent, and of course that's just documenting those who are still seeking work; we're not talking about those who've decided because they are too frustrated not to seek work anymore. In California, I know, we have unemployment still hovering between 8 and 9 percent, and as far as I know, no one has ever told me that to work in the fields of California you need to have a BA or any type of college degree or any particular specialized skill. If that were the case, my father probably would not have been able to work in the fields as he did for many years of his life.

Mr. BERMAN. Would the gentleman yield?

Mr. BECERRA. Certainly I would.

Mr. BERMAN. I thank the gentleman for yielding.

In the rural counties of California, we'll have testimony on this later, the unemployment rate reaches, in many cases, twice as high as the average or higher than the average for the entire California unemployment rates, percentages of 15, 18, even 20 percent unemployment.

Mr. BECERRA. I thank the gentleman from California for adding that.

I would just say that I'm interested in understanding, if we need a program, why we need it, and why we have not been able to address our labor shortages, if there are any, or our need for a guest worker program in the past. I'm very interested in finding out how we will address the concerns of those who are unemployed and seeking work and who are either a citizen or a legal resident. I'm also interested in understanding why it is that we must revamp our program that we have under current immigration law which allows growers to bring in individuals to provide labor in the field. And I'm most interested in also hearing what some of the supporters of the guest workers programs position would be on the overall immigration reform legislation that we have pending in Congress. If they support the cuts to family unification categories of immigration which would allow parents, children, the siblings of United States citizens to come into the country, which at this stage is in jeopardy to some degree, I'd be interested what your thoughts are on that.

With that, Mr. Chairman, I thank you again for convening this hearing, and I'm very much looking forward to the testimony of all the witnesses.

Mr. SMITH. Thank you, Mr. Becerra.

Mr. GALLEGLY. Mr. Chairman.

Mr. SMITH. Mr. Gallegly is recognized.

Mr. GALLEGLY. I know that this isn't common, but Mr. Becerra made a couple of comments that I'd like to respond to, particularly since I only used a couple of minutes of my opening time.

You made the statement that you don't need a B.A. to work in the fields. You don't need a B.A. to be in Congress either, Mr. Becerra. I will tell you the—

Mr. BECERRA. We might be better off if some folks didn't have a B.A. [Laughter.]

Mr. GALLEGLY. Well, that's a tough one to follow up on.

I will tell you that I've learned a great deal about the technical skills necessary to do the jobs that are required at least in the fields in California. It's a little different in the Midwest, and so on, where you use harvesters, but the skills necessary to do the jobs in the fields and to do it adequately when you are dealing with perishable produce, is highly technical. A guy that goes out and picks strawberries doesn't go the next day and pick oranges. Someone packing tomatoes in San Diego County doesn't go cut celery the next day. These folks have specialty. And to watch these folks, it's like finely-oiled machinery. And I might add that these folks are not working for minimum wage, either. The celery folks, for instance, it's not uncommon for them to be making \$9 to \$12 an hour; the same thing for those that are working picking and packing tomatoes, and so on. So, it does require technical skills, maybe not a bachelor's degree, but probably skills that a lot of people with bachelor's degrees do not possess.

Mr. BECERRA. Mr. Chairman, if I could just in 30 seconds respond.

Mr. SMITH. Mr. Becerra.

Mr. BECERRA. I'll bring my father here, and he could testify better than I could on what is necessary to be able to do the work. I agree with you completely. I am not saying that you don't need skills, because you certainly do. Not only do you need skills, you need to have stamina and determination, and quite honestly, tenacity, to do the work that these folks do in the fields. So, I tip my hat to anybody like my father. I will say, however, that I know very few farmworkers who make \$9 to \$11 an hour. I do know quite a few who make less than the minimum wage.

Mr. GALLEGLY. Well, that's against the law.

Mr. SMITH. Thank you, Mr. Becerra. That's one of the things we'll be discussing today.

Mr. Bono, do you have an opening statement?

Mr. BONO. Yes. Thank you, Mr. Chairman.

I apologize for being late.

Mr. SMITH. We're still in opening statements.

Mr. BONO. OK. I just would like to say that I think that it is a good idea to have a working program with immigrants. I don't see it as taking jobs. There's a need there that without these immigrants who are willing to do it and have a skill, again it's not technical, but it requires a lot of focus and a knowledge of how to do these things. They are the best and they are the most willing. It's needed, especially in the farming industry, because without it, those employees are not available anywhere. Thus, the farming industry is stuck and the cost of their product goes up considerably. I think that the idea of a program of this type would be, properly structured, would be most beneficial to the Nation, and so I support it totally. I hope that we would be open-minded about this and do whatever we can to create a program of this type and structure it in such a way that it won't be a threat to anyone and will be a benefit to the country.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Bono.

We'll now begin with our first panel, and would John Fraser please come forward?

Deputy Administrator, Wage and Hour Division of the U.S. Department of Labor, Mr. Fraser, welcome, and we look forward to your testimony.

STATEMENT OF JOHN FRASER, DEPUTY ADMINISTRATOR, WAGE AND HOUR DIVISION, U.S. DEPARTMENT OF LABOR

Mr. FRASER. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear this morning to provide the administration's views on the need for a new agricultural guest worker program.

As the subcommittee members may know, the President opposes a new guest worker program. In June of this year, agreeing strongly with the bipartisan Commission on Immigration Reform's recommendations on this subject, the President said, "A new guest worker program is unwarranted for several reasons. It would increase illegal immigration. It would reduce opportunities for United States citizens and legal residents, and it would depress wages and work standards for American workers."

I'd ask the chairman to include the President's complete statement in the record.

Mr. SMITH. Without objection, we will do so.

Mr. FRASER. Thank you, Mr. Chairman.

[The information follows:]

THE WHITE HOUSE,
June 23, 1995.

STATEMENT BY THE PRESIDENT

I oppose efforts in the Congress to institute a new guestworker or "bracero" program that seeks to bring thousands of foreign workers into the United States to provide temporary farm labor.

In its most recent report, the bipartisan Commission on Immigration Reform chaired by Barbara Jordan unanimously concluded that a large-scale guestworker program would be a "grievous mistake." We have worked hard to reduce illegal immigration and have made great progress toward controlling this longstanding and serious problem. To allow so-called temporary workers to cross the border now would undermine all the success we have achieved.

A new guestworker program is unwarranted for several reasons:

It would increase illegal immigration

It would reduce work opportunities for U.S. citizens and other legal residents

It would depress wages and work standards for American workers

When these programs were tried in the past, many temporary guestworkers stayed permanently—and illegally—in this country. Hundreds of thousands of immigrants now residing in the U.S. first came as temporary workers, and their presence became a magnet for other illegal immigrants.

If our crackdown on illegal immigration contributes to labor shortages—especially for perishable crops that require large numbers of workers for short periods of time—I will direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers.

Mr. FRASER. I would note, too, that the Commission on Immigration says, Mr. Berman reported, quote, "The Commission believes that an agricultural guest worker program is not in the national interest and unanimously and strongly agrees that such a program would be a grievous mistake." I expect that Commissioner Estrada will explain their reasoning, but it's one—it's a position that the administration strongly agrees with.

The administration has introduced comprehensive initiatives to reduce illegal immigrants in the United States. This includes a national board of control, strategy and efforts to seek enhanced resources to significantly expand the Justice and Labor Departments' efforts to curtail job opportunities for illegal migrants.

There has been talk about the potential need for a new agricultural guest worker program should these efforts effectively reduce the flow of illegal migrants across the Southwestern border. Apparently, western growers, in particular, fear resulting labor shortages and disdain the existing nonimmigrant agricultural worker program, the H-2A program, as inappropriate to their perceived needs. However, in his June statement, the President said, and I quote, "If our crackdown on illegal immigration contributes to labor shortages, especially for perishable crops that require large numbers of workers for short periods of time, I will direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent to our obligations to American workers."

Despite these assurances, some agricultural growers continue to cite the administration's efforts to control illegal immigration to promote the need for another agricultural guest worker program. While you'll hear more about this from later witnesses, we understand that the perceived basis for needing such a program is that these growers will risk being unable to harvest their crops without the illegal workforce that they have employed and paid in years past.

However, my testimony details that the preponderance of the Nation's farm labor work force is work authorized. And even among this group, there is substantial underemployment. Furthermore, western growers have not utilized the existing safety valve, the H-2A program.

We would strongly recommend that in examining the need for any guest worker program, three questions be addressed. First, is there a problem, is there a shortage of farmworkers in the United States? Second, if there is a problem, is a new foreign guest worker program the best or only way to address it? And, thirdly, in a particular case where other approaches prove ineffective and a foreign guest worker program is the only way to supply labor to U.S. agriculture, is there something fundamentally wrong with the existing H-2A temporary farm labor program which already provides a safety valve? Our careful analysis of these three fundamental questions leads to the unavoidable conclusion that a new agricultural guest worker program is simply not in the national interests of the United States.

My written statement, which I would ask be included in the record, explains in detail why we oppose a new agricultural guest worker program by outlining the evidence and the reasons why we conclude that the answer to each of these three questions is an unambiguous, "No."

Mr. Chairman, we strongly believe that the evidence and analysis presented this morning will make clear that there is not a shortage of farmworkers nor reason to believe that one will develop in the short term; that even if there were such a shortage, yet another foreign guest worker program is not the way to address it. And, finally, the current H-2A program provides a fundamentally sound mechanism for growers facing difficulties in getting adequate labor to insure that their crops are harvested.

The administration, therefore, joins with the bipartisan Commission on Agricultural Workers, and the bipartisan Commission on Immigration Reform, in strongly recommending that Congress not establish any new guest worker program as not being in the national interest.

Mr. Chairman, I appreciate the attention given by the subcommittee members and the staff to our views, and your careful consideration of those views. We look forward to working with you, and that concludes my statement this morning, Mr. Chairman, and we'll be happy to take questions.

[The prepared statement of Mr. Fraser follows:]

PREPARED STATEMENT OF JOHN FRASER, DEPUTY ADMINISTRATOR, WAGE AND HOUR
DIVISION, U.S. DEPARTMENT OF LABOR

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to appear today to provide you with the Administration's views on the need for establishment of a new agricultural guestworker program.

As the Subcommittee Members may know, the President opposes such a new agricultural guestworker program. In June of this year, agreeing strongly with the bipartisan Commission on Immigration Reform's recommendation on this subject, the President said:

"I oppose efforts in the Congress to institute a new guestworker or 'bracero' program that seeks to bring thousands of foreign workers into the United States to provide temporary farm labor."

In explaining his position, the President said,

"A new guestworker program is unwarranted for several reasons: It would increase illegal immigration; it would reduce work opportunities for U.S. citizens and other legal residents; and it would depress wages and work standards for American workers."

I ask that the President's complete statement be included for the record. I would note too that the Commission on Immigration Reform said, "The Commission believes that an agriculture guestworker program, sometimes referred to as a revisiting of the 'bracero agreement', is not in the national interest and unanimously and strongly agrees that such a program would be a grievous mistake."

The Administration has introduced comprehensive initiatives to reduce the number of illegal immigrants in the United States. This includes a national Border Control strategy and seeking enhanced resources to significantly expand the Justice and Labor Departments' efforts to curtail job opportunities for illegal migrants. There has been talk about the potential need for a new agricultural guestworker program should these efforts effectively reduce the flow of illegal migrants across the southwestern border. Apparently, Western growers in particular fear resulting labor shortages and disdain the existing nonimmigrant agricultural worker program—the H-2A program—as inappropriate to their perceived needs. However, in his June statement, the President said:

"If our crackdown on illegal immigration contributes to labor shortages—especially for perishable crops that require large numbers of workers for short periods of time—I will direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers."

Despite these assurances, some agricultural growers continue to cite the Administration's increased efforts to control illegal immigration to promote the need for another agricultural guestworker program. While you will hear more about this from later witnesses, we understand the perceived basis for needing such a program is that these growers will risk being unable to harvest their crops without the illegal workforce that they have employed over the past years. However, as I will discuss in more detail, the preponderance of the farm labor force is work-authorized and even among this group, there is substantial underemployment. Furthermore, agricultural growers have not utilized the existing "safety valve"—the H-2A agricultural guestworker program.

We would recommend examining the need for any new agricultural guestworker program by addressing three questions:

- (1) Is there a problem, *i.e.*, is there a shortage of farmworkers in the U.S.?
- (2) If there is a problem, is a new foreign guestworker program the best or only way to address it?
- (3) In a particular case where other approaches prove ineffective and a foreign guestworker program is the *only* way to deal with supplying temporary labor to U.S. agriculture, is there something fundamentally wrong with the existing H-2A temporary farm labor program which already provides agricultural growers a "safety valve"?

Our careful analysis of the need for a new agricultural guestworker program, based on these fundamental questions, leads to the unavoidable conclusion that such a program is simple *not* in the national interest of the United States. If I may, let me explain in more detail why we oppose an agricultural guestworker program by outlining the reasons we conclude that the answer to each of these questions is an unambiguous "No."

THERE IS NO SHORTAGE OF FARMWORKERS

Mr. Chairman, the first question is whether there is a problem—that is, is there evidence that a shortage of agricultural workers exists, or will arise in the near future, that cannot be met with our domestic labor force? The answer is “no.”

As many people are aware, the Immigration Reform and Control Act of 1986 (IRCA) not only provided for a generous legalization program for nearly 1.1 million agricultural workers but for a contingent Replenishment Agricultural Worker Program (RAW) as well. For each of the four fiscal years that this program was in place, the Secretaries of Agriculture and Labor worked jointly to determine if there was a shortage of agricultural workers in the U.S. and if such a shortage was found, what number of replenishment agricultural workers should be admitted to the United States. In every year during the period FY 1990–93, this joint USDA/DOJ research showed that there was no shortage of agricultural workers in the United States (though during these years an average of about 17,000 nonimmigrant H–2A farmworkers were admitted each year).

Independently, the Congressionally-mandated, bi-partisan Commission on Agricultural Workers concluded in its November 1992 report that:

“... [d]espite an expanding perishable crop industry, the national supply of agricultural labor has been more than adequate for the past several years.” (p. xxii).

While the Commission acknowledged that in many parts of the country a significant portion of the harvest work force is unauthorized, it went on to say:

“... [w]ith the existing agricultural labor supply, there is currently no need to supplement the farm work force with additional foreign workers beyond those authorized through the existing H–2A program.” (ibid.).

The National Agricultural Workers Survey (NAWS) continues to collect detailed demographic and labor force data on the U.S. farm labor force. The Survey reveals a high degree of *underemployment* among U.S. farmworkers. Data from the FY 1990–91 NAWS found that:

“The U.S. farm labor system is characterized by an oversupply of workers. At any point in the year, there is a plentiful supply of farmworkers (at least 190,000, or 12% of farmworkers) in the United States who are not working. Furthermore, there are many workers who are out of the country but may be available for work. Even those in non-farm work may be available. It appears that the chronic surplus exists at the regional level as well. In the North, at any point in the year, at least 10% of locally available farmworkers are not employed; in California, 13% and in the South, 15%.” (Source: *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market*, p. 38)

More recent data from the 1993 and 1994 NAWS indicates that this surplus of farmworkers has persisted, and may even be increasing. This more recent survey found that, *even in the primary harvest months*, at least 15% of farmworkers in the United States were not working. In every region, an oversupply of workers was apparent. In the North, at any point in the year, at least 13% of local farmworkers were not employed; in California, 14%, and in the South, 20%. (Source: Unpublished computer tabulations of the FY 1993–94 NAWS)

PERCENT OF FARMWORKERS IN DIFFERENT ACTIVITIES, NATIONAL FIGURES, BY MONTH

[In percent]

Month	Farm work	Non-farm work	Not working while in US	Abroad	Total
January	36	14	27	23	100
February	40	13	26	21	100
March	44	12	26	18	100
April	51	12	21	16	100
May	56	11	21	12	100
June	61	12	15	12	100
July	61	12	15	12	100
August	60	11	17	12	100
September	58	11	19	12	100
October	55	11	20	14	100
November	49	12	22	17	100
December	40	13	25	22	100

Source: NAWS data, fiscal year 93–94

These data also show that even in the primary harvest months, at most 61% of all U.S. farmworkers are employed in farmwork. The survey also found that 75%

of all farmworkers have work authorization.¹ When viewed together, these two statistics indicate that there is an adequate supply of farmworkers in the United States: the 75% of farmworkers who have work authorization provide a sufficient supply of labor given that, even in the periods of high demand, at most 61% of farmworkers are employed in farmwork. If the supply of illegal farmworkers dried up tomorrow (or if growers stopped hiring illegal workers), the overall supply of work-authorized farmworkers is great enough to meet demand *even in peak harvest months* (though localized shortages may still occur).

One of the reasons for the surplus of farmworkers in the United States has been the already-cited legalization programs under IRCA and the subsequent granting of permanent resident status to nearly 1.1 million special agricultural workers (SAWs) and another 1.6 million individuals who were living in the U.S. before 1982. Although some SAWs have left the agricultural sector, this new group of U.S. legal permanent residents continues to account for a substantial share of all U.S. farmworkers. In the FY 1993/94 National Agricultural Worker Survey, legalized SAWs made up 22% of all U.S. farmworkers. When those who legalized based upon being in the U.S. prior to 1982 are included, IRCA-legalized individuals account for 27% of all U.S. farm laborers. IRCA has thus provided U.S. growers with an infusion of legal permanent resident agricultural workers through its legalization programs. As the Commission on Agricultural Workers noted:

“. . . most SAWs are likely to remain in agriculture throughout their working lives. Thus, the expectation that many among the newly legalized workers would move immediately into nonagricultural industries has clearly not materialized.” (pp. 80–81)

Thus, the answer to the question of whether there is a shortage of agricultural workers in the U.S. is a resounding “no.” All of the available data on labor supply indicate that overall there has been and continues to be an agricultural labor *surplus*. What then is the basis for saying that the U.S. needs a new foreign guestworker program? The Administration’s new border and worksite enforcement initiatives present a new opportunity to advocate for another foreign guestworker program. Some are seizing this opportunity to “speculate” that the future decrease in the flow of illegal migrants will prevent harvesting certain crops. While—as the President has acknowledged—there is a potential for such shortages to develop in the future, most people would concede that claims of anticipated labor shortages are premature, at best.

Again, the answer to the first question is that the evidence is overwhelming—and, to our knowledge, uniform—that there is no overall shortage of farmworkers in the U.S.; nor is there likely to be in the near future. The debate should stop here—this alone is reason enough not to create a new foreign agricultural guestworker program. Indeed, it is the fundamental reason that the Administration opposes such a program.

As the Sacramento Bee recently noted in an editorial.

“A decade ago, Congress, in response to similar grower pressure, created guest-worker exceptions only to discover that the claims of severe labor shortages were exaggerated and in some cases simply false. Before the nation repeats that cycle—with major consequences both in illegal immigration and on depressed wages for American workers—there ought to be certainty that even when decent wages are offered, no American workers are available. And there certainly ought to be no guest-worker program controlled by growers for their own benefit.” (June 9, 1995)

A NEW GUESTWORKER PROGRAM IS NOT IN THE NATIONAL INTEREST

Let me turn nonetheless to examine the second question: “If there were a labor shortage problem, is a new foreign guestworker program the best or only way to address it?”

In examining guestworker programs, the United States should benefit from our past experiences. The United States had implemented a large scale agricultural guestworker program—the Bracero Program—in the 1940s. This program was terminated by Congress in 1964 on the basis of its adverse impact on the wages and working conditions of U.S. farmworkers. Furthermore, the Bracero Program caused recurring tensions in U.S.-Mexican relations, as Mexico continually accused the U.S. of mistreating Mexican nationals working in U.S. agriculture.

There is little reason to believe that offering and promoting another avenue for legal entry and employment in the U.S. will lure certain employers and entire employment sectors away from their reliance on illegal workers; IRCA’s history in the

¹ Some agricultural grower/producer interest groups have asserted that this percentage may be as low as 60% in certain areas/crops. The source of their estimate is unknown.

agricultural sector has shown this not to be the case. Nor can stepped-up interior enforcement focused on employers of unauthorized workers reasonably be expected to change these established employment relationships that are—in large part—driven by economic considerations in the short term.

Advocates of a new foreign guestworker program may believe that such programs will *reduce* the flow of illegal workers into the U.S. as well as reduce the number of illegal visa overstayers—in effect, by converting the illegal flow to a legal one. This belief is not substantiated by historical experience in the U.S. or Europe—guestworker programs establish migratory networks and paths that exacerbate illegal migration.

Guestworkers are temporary in name only. Despite the best intentions of receiving countries and even the initial intentions of the guestworkers themselves, guestworkers tend to come and to stay in the receiving country. Forthcoming guestworker proposals may suggest, as remedial measure, that a portion of the foreign worker's wages would be withheld until the worker returns to the home country at which time it would be disbursed. However, given that the overall wage differential between Mexico and the U.S. is in the range 12:1 (it may be even greater in agriculture), it is questionable as to whether even such an extreme measure as holding the worker's wages would provide sufficient incentive to leave the U.S. labor force and return to Mexico.

Forthcoming proposals may also allow guestworkers to remain in the U.S. between jobs. Of course, this would complicate enforcement and repatriation efforts. If workers develop any desire to stay in the country (or to move into other employment areas), they will have better opportunity and more time than under the current system to disappear into the underground economy. The previous employer would have no legal obligation to return the employees to their home country, as they must do now under the H-2A program. INS has recently found that half of the resident illegal aliens in the United States are visa overstayers; we believe that yet another guestworker program will only exacerbate this problem.

Once temporary worker programs are established, they soon become entrenched and extremely difficult to terminate. In effect, such programs can transform temporary labor shortages into structural workforce problems. The experience of other countries shows that reliance on temporary worker programs often delays, and may prevent structural adjustments in the economy.

History also shows that guestworker programs, because they create structural workforce problems, can create pressures for legalization and conversion to permanent residency. One only has to recall the successful lobbying to establish a legalization program tailored specially for farmworkers in IRCA. Although the Commission on Agricultural Workers found that "[a] large portion of SAWs who were identified as working within agriculture after obtaining legal status appear to continue to work in seasonal agricultural services" (p.xxi), this still has not satisfied those interested in assuring a plentiful and cheap supply of compliant foreign labor.

The perception that guestworkers fill jobs that the domestic population does not want ignores the dynamic nature of labor markets. The use of guestworkers inevitably moderates market-driven incentives to improve productivity and raise wages to levels at which the jobs would be more attractive to domestic workers. Indeed wages in agriculture have stagnated; they are lower today than five years ago:

REAL WAGES FOR HIRED FIELD WORKERS

[In 1994 dollars¹]

	1989	1990	1991	1992	1993	1994
Hourly wage	6.18	5.96	6.01	6.05	6.09	6.04

¹ Nominal wages adjusted by CPI U

Source: U.S. Department of Agriculture, National Agricultural Statistics Service

A new agricultural guestworker program would encourage more nonimmigrant employment in agriculture, where workers are among the most vulnerable and, thus, where U.S. workers are most likely to suffer unfair competition, displacement, and other forms of harm, building structural labor supply problems.

Additionally, guestworker programs can create and institutionalize a two-tier workforce with the guestworker population being extremely vulnerable, not only to workplace exploitation but to a host of civil and human rights abuses consequent to their second-class status and their indenture to one employer or even industry. The vulnerabilities inherent in the presence of a disenfranchised foreign sub-class population have negative social, economic, and political implications. Europe is still suffering from the repercussions of its extensive guestworker programs of the

1960s—for example, the xenophobia and attacks on foreigners in Germany and, in France, the increasing popularity of the anti-immigrant party. Such problems are even evident within the territory of the United States—for example, in the Commonwealth of the Northern Mariana Islands.

While some in sending countries may support the establishment of a new agricultural guestworker program in the U.S., it is our strong belief that such a program would soon create, as did the Bracero Program, new bilateral issues between the U.S. and source countries as they work to protect the interests of their nationals working here.

In addition, there is considerable reason to believe that a new agricultural guestworker program would not be well-received by the American public. On the contrary, it is more reasonable to assume that the public would ridicule proposals to “solve” the problem of illegal migration by making illegal workers legal. Nonetheless, some advocates of a new guestworker program for agriculture present it as the only alternative to the sector’s current reliance on illegal migrants in the labor force—i.e., as the only alternative to illegal migration and as a way to regulate the illegal flow. Clearly, this is a false choice.

Finally, advocates of a new agricultural guestworker program may argue that while there may be structural surpluses in the agricultural labor force, there are local or crop-specific shortages because unemployed U.S. farmworkers are not located where and when they are needed. Of course, this begs the question of why growers should be able to go to Mexico or Central America to supplement their work force as opposed to going, for example, to Texas or Florida, as required under the current program.

Therefore, the answer to the second question is that a new foreign guestworker program is *not* the best or only way to address shortages of farmworkers in the U.S. Creation of such a program would likely result in many more—and more significant—problems than it might conceivably address.

THE H-2A PROGRAM

Finally, Mr. Chairman, let’s examine the third question: In a particular case where other approaches prove ineffective and a foreign guestworker program is the *only* way to deal with supplying labor to U.S. agriculture, is there something fundamentally wrong with the existing temporary farm labor program which already provides agricultural growers a “safety valve”—the H-2A nonimmigrant program?

The current H-2A program was not created overnight. Indeed, it was enacted into law as the H-2 provision of the Immigration and Nationality Act of 1952. The IRCA amendments sponsored by Senator Simpson streamlined and made more user-friendly the nonimmigrant agricultural program, commonly referred to as H-2A. This program is designed and has been utilized to supplement the domestic agricultural labor supply in the event of localized shortages where U.S. workers cannot be successfully recruited. Over the past four decades, the H-2 and H-2A programs have provided a safety valve for agricultural growers to ensure that their crops can be harvested. In its evolution over the years, it has sought to protect U.S. workers from the adverse effects of displacement, wage depression, and deterioration of working conditions due to the importation of foreign workers in the United States, in part by protecting foreign nonimmigrant workers from abuse and homelessness. Agriculture is a sector of the U.S. economy where workers are highly vulnerable to exploitation and unfair competition. By any U.S. standard, wages are low and working conditions are poor. Thus, there are good reasons why the H-2A program has evolved into its current form.

The H-2A program works well when utilized. The requesting agricultural employer must request workers 60 days prior to anticipated need, and demonstrate that meaningful efforts will be made to recruit domestic workers and that the presence of foreign workers will not adversely effect domestic workers’ wages or working conditions. The agricultural employer seeking certification is entitled to a response from DOL of any deficiencies which may render the application not acceptable *within seven days* of submitting the request which—if accepted—assures access to non-immigrant farmworkers to the extent the grower is unable to recruit sufficient U.S. farmworkers. A final determination about granting or denying the request must be made by DOL no later than 20 days prior to the date of need. The statute and the regulations require prompt DOL action on H-2A requests and we are not aware of any evidence that the Department has not fulfilled its obligations. The Department’s statutory focus on making every effort to find U.S. workers for H-2A jobs may have inconvenienced some employers, but there is scant evidence that the Department has denied legitimate requests for nonimmigrant workers.

Further, there are provisions in the H-2A program to accommodate agricultural employers filing emergency requests if there is good and substantial reason, such as unforeseen changes in market conditions. While relatively few such requests have been received, the Department has consistently accommodated growers with legitimate emergency needs. Furthermore, a high percentage of growers who seek workers under the H-2A program—even in the face of substantial oversupply of domestic farmworkers I mentioned earlier—are granted approval to bring in foreign workers. In 1992, nearly 90% of all requests for certifications were granted; the program does work for most growers who seek to use it.

However, use of the H-2A program is generally declining and is very selective. In 1990, the total number of jobs certified for H-2A workers was just above 25,400 (with about 18,200 H-2A workers admitted to perform these jobs); by 1994 the number of jobs certified had declined to about 16,700. Nearly all H-2A workers are used on the East Coast, not in the West. Western growers, if they have a need, have not tried to use the present system. H-2A use in 1994 in California, for example, was limited to about 400 sheepherders; in Arizona, about 200 H-2A workers were employed in citrus and sheepherding. If utilization of the H-2A program were increased, more agricultural employers would be offering U.S. workers job opportunities superior to those otherwise available for a particular commodity in an area. This, in turn, would enable the employment service to place available U.S. workers in these jobs. Combined with enhanced illegal immigration control, this would have the effect of replacing unauthorized workers with U.S. or nonimmigrant workers.

As I mentioned earlier, the President has assured American agriculture that if current efforts to stop illegal immigration contribute to agriculture labor shortages, he will direct the Secretaries of Labor and Agriculture to improve and enhance existing programs. The Department, through its NAWS, intends to continue to closely monitor the supply of agricultural labor, as we have since the passage of IRCA. Should the Department find that there is a real risk of labor shortages in agriculture, we will work with the USDA, growers and workers to take effective remedial measures. These measures may well include making more efficient use of the existing agricultural labor supply, measures to find unemployed workers outside of agriculture who may be persuaded to take agriculture jobs if wages and working conditions are improved, and other steps to better utilize available U.S. workers. If a shortage still threatens, we will explore what must be done, if anything, to allow the current H-2A program to appropriately respond to the shortage.

Thus, the answer to our third question is that the H-2A program can work to meet localized agricultural labor shortages. Any effort to resort to other, untested foreign agricultural guestworker programs raises anew the specter of the dreadful outcomes of the Bracero Program. Ironically, it appears that the impetus for creating a totally new agricultural guestworker program comes primarily from those who have not even tried the existing H-2A program and, rather, continued to rely on attracting illegal migrants to meet their workforce needs.

CONCLUSION

To briefly reiterate, Mr. Chairman, the answer to each of the three questions in our analytical framework is negative: there is not a shortage of farmworkers, nor a reason to believe that one will develop in the short term; even if there were a shortage, yet another foreign guestworker program is not the way to address it; and, finally, the current H-2A program provides a fundamentally sound "safety valve" for growers facing difficulties in getting adequate labor to ensure their crops are harvested—even though it may not entirely please either growers or farmworkers.

The Administration therefore joins with the bi-partisan Commissions on Agricultural Workers and Immigration Reform in strongly recommending that Congress *not* establish any new agricultural guestworker program, which would simply not be in the national interest.

I appreciate the attention given by the Subcommittee members and staff to our views, and their consideration. The Department looks forward to continuing to work closely and cooperatively with you and your staff.

Mr. Chairman, that concludes my statement and I will be pleased to respond to questions.

Mr. SMITH. Thank you, Mr. Fraser.

Let me ask you a couple of questions about the effectiveness of the H-2A program, relying largely on my questions from ranchers in my own congressional district. This does, admittedly, go back several years. But I heard from a number back then, and I assume

the case would be true today, that the H-2A program is overly regulated, it takes too long, and it's awfully difficult to obtain workers when they need them. The H-2A program, when implemented, anticipated that about 200,000 workers would be approved. Today it is less than 20,000, less than one-tenth the number anticipated. So, I guess that my first question is, why is it that so few workers are being applied for under the current H-2A program? And do you see it as one possible reason, the cumbersome nature of the H-2A program?

Mr. FRASER. Mr. Chairman, the H-2A program, as you may know, and I don't know how far back the experience goes, it was substantially revised in the Immigration Reform and Control Act in 1986 by Senator Simpson, predominantly. The program requires an applicant, employers, someone who is seeking foreign workers in agriculture to make application no more than 60 days before the date of need. They will get—that applicant will get a response with respect to the adequacy of the application within 7 days of receipt, that's a mandate in the statute, and will receive a final determination no later than 20 days before the prior date of need. The simplification, the streamlining of the program was included in the amendments in 1986 to make sure that there weren't undue delays and there wasn't a lot of back and forth with respect to those applications.

Mr. SMITH. Do you have an idea of what the typical turnaround time is once an application has been made for a worker, how long it takes for a worker to be approved? I know 90 percent are approved.

Mr. FRASER. Ninety percent is the typical approval rate. These applications are adjudicated within 7 days, as required in the statute. That 7-day adjudication, where the application is accepted, where it satisfies the criteria under the program, that is followed by a period of recruitment, and then it's 20 days before the date of need—at least 20 days before the date of need that a final adjudication is made.

Mr. SMITH. Now what would you say to the individual that could be a rancher that wants to work his cattle or her cattle? It could be a grower who has to harvest perishable crops within a matter of days. How would you be able, through the H-2A program, given those frames of time, to guarantee that the worker would be available when needed?

Mr. FRASER. The program also has emergency waiver criteria which would allow waiver of those statutory time frames for application in two cases: one, where a user of the program had not used the program in the prior year, and, secondly, in the case where there's any sound basis, some kind of unexpected change in market or weather conditions, any sound, reasonable basis for waiver, there is a provision to waive those time frames and to approve those applications on an emergency basis.

Mr. SMITH. You've said in your opening remarks that guest worker programs generally increase illegal immigration. Why is that?

Mr. FRASER. That's been the historical experience, Mr. Chairman, not only with our own historical experience under the bracero program and others, and as you know from your careful analysis of illegal immigration problem, that a substantial proportion of ille-

gal migrants who reside in the United States are visa overstayers, admitted legally, but stayed beyond the terms of their visa. But it's also the experience of guest worker programs in Europe and everywhere they've been tried that guest worker programs become a vehicle, become a mechanism for establishing networks and migration patterns that result in exacerbating illegal migration problems.

Mr. SMITH. Just a followup question: if individuals are coming into the country primarily to obtain jobs, just assuming that, and if you had some form of a guest worker program, would that not lessen the attraction and reduce the number of jobs available and, therefore, diminish the number of illegal aliens coming in otherwise?

Mr. FRASER. Mr. Chairman, we do have a variety of guest worker programs. We have what I call an alphabet soup of employment based, nonimmigrant visa programs that provide—they are structured, as some of the members have indicated, structured to assure protections for U.S. workers against unfair competition, to assure that an adequate labor supply is available in a variety of circumstances where needed. Yet, there are economic incentives to attract compliant workers who have few rights in a labor market, who have little means of protecting themselves, to avoid even those obligations under these nonimmigrant guest worker programs. So there are countervailing economic incentives that may apply.

Mr. SMITH. Thank you, Mr. Fraser. Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman.

I'd like to deal with just a few of these issues because I think the points raised are critical. In his opening statement, Elton mentioned evidence of the adequacy of the H-2A program was that only 15,000—

Mr. GALLEGLY. I think Lamar mentioned that, but I would concur.

Mr. BERMAN. And the chairman just made an assumption, which I'm not aware that 200,000—

Mr. SMITH. That was the anticipated number.

Mr. BERMAN. Where was that?

Mr. SMITH. I think by the administration or by the Department of Labor, as I recall. Mr. Fraser agreed with me, so I don't know—is that the source?

Mr. FRASER. I think, Mr. Chairman, Mr. Berman, at the time of the Immigration Reform Control Act, employer sanctions provisions, there were estimates, both with the replenishment agricultural worker program which was established and with the H-2A program, there were estimates that use—utilization would increase, but—

Mr. BERMAN. No, here's what went on: the growers came to the Congress when we were considering employer sanctions and said, "We need a guest worker program, we might need a million workers." Then they said it was 500,000; then they said it was 200,000. We created as an alternative to that new guest worker program a legalization program, and we made some revisions to H-2A. No one ever attributed a 200,000 figure to the H-2A program or anything else like this.

Here is the premise of it: and correct me if I'm wrong—you only resort to the existing worker program in agriculture if there is an inadequate supply of U.S. workers.

Mr. FRASER. Correct.

Mr. BERMAN. So, if there is an adequate supply of U.S. workers, then there should be no guest workers. And it's going to vary. We will hear testimony—we created a Commission on Agricultural Workers in the 1986 law. I was very upset at the time because the Commission was so grower-dominated in terms of its appointments from the different branches. President Reagan, and the Senate was in control by Republicans, and I was very unhappy about that.

We have some of the people I think here today who were on that Commission. Notwithstanding the orientation of that Commission, and I commend the Commission for doing this, they consistently found massive surpluses in agricultural labor for a lot of different reasons, one of them being employer sanctions didn't work, no doubt. But on the last issue you raised, wouldn't you, if you had a good guest worker program, wouldn't you reduce the influx of workers? You wouldn't need them; a grower would go to the guest worker program. It all depends on how that program works.

The real reasons that some people don't like the H-2A program is because it has an adverse effect on wage rate which says you've got to pay the workers a certain amount based upon what domestic workers have been getting. In other words, you can't bring in people who are willing to work for much less than the average wage. You have to make sure there is some housing for these folks. These are the reasons why some growers have preferred undocumented workers where there's no—there's a minimum wage law, and I'll assume they comply with that, but there's no effort to try and maintain the wage rates of domestic farmworkers in that particular area.

Mr. Gallegly has pointed out that in many areas where you have an historic reliance on domestic farmworkers, you have wage rates that are much higher than the minimum, and he's right. This brings that down. There's a direct relationship between the protections for workers and how much the growers want to use or not use that particular program.

But the final point I'll make on this, and any thoughts you have from my ramblings would be useful, one of the points I mentioned in my opening statement, so much of our focus has been on how to try to deal with the border, and, as you know, I've been supporting you on the verification issue because how do you make the sanctions meaningful without verification? As sure as the sun rises in the East, if you start expanding the guest worker program, then you will be bringing workers here who will not go back. They will do that work in that program and then they will disappear. Even in the little H-2A program, which is almost all east coast, in this last year 16,000 came in on that program and 11,000 went back. When you start expanding to some of the huge numbers that some of the growers in the West want, in the event that the border enforcement really gets meaningful and verification gets meaningful, you are going to find these same kinds of problems. So you will be undermining everything you are trying to do, I believe, even with the best of intent.

Pete Wilson, when proposing this said, "We'll withhold the last couple of weeks' wages." That ain't going to be the basis on which somebody who wants to come in here to get into this economy is going to go back to the country he came from.

Mr. FRASER. Mr. Berman, I would just pick up on one point, if I may, and that is to emphasize that a properly-designed guest worker program is one that would be designed not just to protect U.S. workers from adverse effect, but in fact to avoid structural dependencies on foreign workers because of the distortion in labor markets that that inevitably causes, both in effects on wages, working conditions, and job opportunities. So, I would agree that the utilization rates for the H-2A program are not indicative of it being a failed program by any means. In fact, it may indicate just the opposite, that it's working to avoid structural dependencies on foreign workers.

Mr. SMITH. Thank you, Mr. Fraser. Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman.

Before I get to Mr. Fraser, I just want to respond to my good friend, Mr. Berman, when he says a guest worker program would increase the likelihood of people coming and staying. I'd just like to refer him to an article in the Christian Science Monitor a couple of weeks ago. I don't know if you saw it, but in the one State of Mexico, Mechican, there are more people, according to the folks in Mechican, that are illegally living in the United States than there are left in Mechican that are farmworkers because of the increased effort that we have put on the Border Patrol where it is more difficult to go back and forth as it has been in the past. These folks have traditionally gone home to their families at Christmastime, and last year there was a 30-percent decrease in the number of folks returning because it cost so much more money to pay a cayote to get them back into the country. So, the current system isn't working, either, Mr. Berman.

Mr. Fraser, would you acknowledge—the Department of Labor looked at the statistics, and would you agree that at least a minimum of 50 percent of the people that are working currently in our fields across the country are in this country illegally?

Mr. FRASER. No, Mr. Gallegly. We—the Department conducts a national agricultural workers' survey, has for several years, which we believe, and I think others believe, is the most reliable data available on the demographics of the immigrant work force. Our data indicate that nationally 75 percent of agricultural workers in the United States are work-authorized. In California, it's 73 percent. And even during peak seasons, only about 61 percent of agricultural workers in the United States are employed in agriculture. So, there's a substantial gap between the percentage of farm workers employed, even in peak seasons, and the work-authorized population. So, our figure is 25 percent.

Mr. GALLEGLY. You say 25 percent that are authorized; now could that be that they are—

Mr. FRASER. No, that are unauthorized.

Mr. GALLEGLY. Unauthorized. So, you're saying that 75 percent are authorized. Now does authorized mean legal?

Mr. FRASER. Yes, sir, work-authorized.

Mr. GALLEGLY. None of these 75 percent of the people, you believe, would be using any counterfeit or illegal documents to obtain work?

Mr. FRASER. As I understand, the way the NAWS, the National Agricultural Workers Survey is conducted, it does not rely on documentation as an indication of legal status, but double-checks, cross-checks, and back-checks—

Mr. GALLEGLY. Just to see if the workers have the proper documentation, and so on?

Mr. FRASER. No, sir. It checks country of origin, duration of stay in the United States, and a number of other factors. And we have, if you would like—we can give you some more information about how that's checked.

Mr. GALLEGLY. I would really like to see the source of that information because you are the only person that I have talked with, whether it's the Immigration Service, which is a Federal agency, whether it's the Jordan Commission, and a Commission that you were quick to quote and praise and rightfully so, to people that are in the farm labor business that have told me—these are people that are purveyors of labor—say 80–85 percent. Now, I don't know if it's 80–85 percent, but the most conservative estimates that I've had, not from growers, they do their job because of verification, and so on, but from those that—we had a recent situation in my county a couple of years ago where there was a raid, and they found 85 percent of the strawberry pickers were in this country illegally or were using phony documents.

Mr. FRASER. We'd be happy to share that information and give you an explanation of how that information's compiled.

Mr. GALLEGLY. Well, let's say that—let's use your number just for a second, that 25 percent of the people that are working in our fields here are here illegally. That means one-fourth, and I would assume that's really not an acceptable number either. If you're here illegally, you shouldn't be here. Recognizing by your numbers that a fourth of the people are here illegally, would you support a telephonic verification process of verifying whether the Social Security number is an accurate one? Because most of the counterfeit documents, the Social Security number is certainly just a number that somebody stamped on a card that you can buy for twenty bucks. I have one in my wallet. It's like American Express; I wouldn't leave home without it. But, in any event, would you say that that particular method of verification would be something that your agency would support?

Mr. FRASER. The administration supports that provision in the immigration legislation—

Mr. GALLEGLY. The 1-800 number?

Mr. FRASER. The telephone verification system, and as you know, the Immigration Service is developing and expanding their telephone verification pilot this year very substantially in California.

Mr. GALLEGLY. Just one other quick question, Mr. Chairman. On the H-2A and its predecessor, the H-2B program, would you agree that they have both been subject to continuous litigation regarding the program's complex regulatory requirements?

Mr. FRASER. There has been a substantial amount of litigation under those programs, but I don't think any different than under

many labor standards protection programs where a private right of action is afforded.

Mr. GALLEGLY. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Gallegly. Mr. Becerra.

Mr. BECERRA. Good morning. Thank you for being here.

Mr. FRASER. Mr. Becerra.

Mr. BECERRA. Let me just ask you a few questions, and then, hopefully, they'll come around to relating to the issue of the guest worker program. But, first, I'd like to get from you, since you work with wage and hour, what your understanding is of our current unemployment rate. Give me generally for the United States, if you know it, and perhaps some of the larger States that have agricultural regions, what those might be.

Mr. FRASER. Focussing on the agricultural work force, Mr. Becerra, in my written, I've provided a chart that shows the distribution of farmworker employment by month. It's on page 4 of the statement. And as you—if you can take a quick look at that, you'll see that the percent of farmworkers employed in farmwork ranges from a low of 36 percent in January to a peak employment level of 61 percent in June and July nationally. We do have some of the distributional data like this for the farmworker population for some regions, but this is a national distribution. At the same time, you can see that there is a small percent, between 11 and 14 percent, employed in nonfarmwork at various months during the year, a range of 15 to almost 30 percent not working. As you indicated, the average number of weeks for farmworkers is about 30, I believe. I think you might have said 29. And another percentage of U.S. farmworkers who are abroad. So that at any time, even at peak times during the year, only about 61 percent of farmworkers are actually working in agriculture.

Mr. BECERRA. And that means they are either unemployed or working elsewhere.

Mr. FRASER. Or outside the United States, perhaps working there, yes.

Mr. BECERRA. And I see in your written testimony that you say that any point in time in California, the unemployment rate for farmworkers was 13 percent, and I guess that nationwide it was about 12 percent, at least.

Mr. FRASER. At least.

Mr. BECERRA. So, we have unemployment rates for farmworkers that exceed our current unemployment rates generally for the entire population.

Mr. FRASER. And chronic structural underemployment as well, yes, sir.

Mr. BECERRA. Now if I understand the guest worker program correctly, what it says is that if a grower can go to a country, go outside the U.S. borders to bring in workers to perform the work in the fields, and if I understand your written testimony correctly, we have States that have unemployment rates that exceed 10 percent, 12 percent, 15 percent in the farmworker area where there are farmworkers in these States that are unemployed and readily available to do work. Is there—do you see any logic in having growers of this country reach outside of our borders to bring in a worker

to do the work in the fields that they could reach into a different State within this country's borders to do the same type of work?

Mr. FRASER. Certainly not without making that effort to recruit and attract domestic farmworkers who are unemployed, available, and willing to do the work. And certainly that requires some consideration of decent wages and working conditions.

Mr. BECERRA. And the H-2A program does require that a grower certify that they're making efforts to locate any available workers within the United States before they can secure someone from a country abroad?

Mr. FRASER. Yes, sir.

Mr. BECERRA. Do you see that as a heavy imposition on someone?

Mr. FRASER. I see it as a necessary imposition.

Mr. BECERRA. Let me talk to you a little bit about—because I know you do enforcement of our labor laws as well. Do you have any ideas of what the conditions are in many of the areas of our agricultural community for farmworkers?

Mr. FRASER. Yes, Mr. Becerra. Our agricultural enforcement program includes both the H-2A program and the Migrant Seasonal Agricultural Worker Protection Act, as well as the minimum wage requirements under the Fair Labor Standards Act. We typically find violations in about half of the investigations, wage violations and other violations of working conditions. And certainly those are most pronounced, most common, where farm labor contractors are involved.

Mr. BECERRA. And explain to us a little bit about what you mean by farm labor contractors, or are these people that work directly for a grower, or are they on their own?

Mr. FRASER. Farm labor contractors are crew leaders, are individuals who are, in effect, labor brokers for agriculture growers. They are intermediaries intending to locate and supply agriculture workers to growers who have a need, or a temporary need.

Mr. BECERRA. Is it correct that the laws that apply to growers don't necessarily apply to farm labor contractors?

Mr. FRASER. There are provisions in the Migrant Seasonal Agricultural Worker Protection Act which apply exclusively to farm labor contractors, that's correct.

Mr. BECERRA. Thank you.

Mr. SMITH. Mr. Becerra, are you finished?

Mr. BECERRA. Thank you, yes.

Mr. SMITH. Mr. Bono.

Mr. BONO. I'd like to ask Mr. Becerra, are you opposed to a guest worker program?

Mr. BECERRA. I'm opposed to any system that would not take into account first the needs of workers here in this country who might not be employed and are actively seeking employment and would be ready to take a job if offered.

Mr. BONO. You don't accept that there are jobs that people here just won't take. So there's a void there?

Mr. BECERRA. No, I accept that, but I don't think that's a reason not to work. If you are not working because you don't like the work, that's not the American way. So I'd say to that individual that they probably—I'd probably want to replace that person with

someone abroad who says they'd like to work just because that's not the type of attitude that I think we accept in this country.

Mr. BONO. Yes, well, but I'm just trying to get your point of view on this.

Mr. BECERRA. Let's put it this way: I don't think there are millions of people in this country who are unemployed who are saying they don't wish to work. I think a lot of them aren't in the areas where the work is. A lot of them aren't aware of the availability of work in certain areas. Obviously, I think a lot of folks have become unemployed in professions where it's a lot easier than having to go out there and work on a farm and harvest crops. I don't think anyone loves to pick cotton. I know my father was never a fan of picking tomatoes, but he did it, and he's paying the price now in his older age. But it gets done, and we have people here in this country who, I think, would be more than willing to do it.

Mr. BONO. I disagree with you. Being a businessman and being in the restaurant business, it was impossible to get busboys. [Laughter.]

And so, there was an obvious void that sometimes couldn't be filled if we couldn't get people who were willing to take those jobs.

So, do you think that an immigrant would agree with you, would say, "I'm glad you're here preventing us from possibly getting a job and coming over here and working part time?"

Mr. BECERRA. I think an immigrant who is ready and willing to take a job even under less than minimum wage, less than good working conditions, would be somewhat frustrated to see some of us in Congress saying you can't come through because there are Americans who aren't employed. But, I think they'd also understand that there are laws, and we have a right to determine who comes into this country, and I think they would be respectful of that. But I agree with you there are hundreds of thousands, if not millions, of people around the world who would love to work for \$4.25 an hour, and we do have people, unfortunately, in this country who would loathe to have to work for \$4.25 an hour. We have laws and we have debated those laws, and I would say that those who aren't willing to work—because there are certainly many Americans who are unemployed who would be willing to work for low wages and not the best of working conditions.

Mr. BONO. Well, right now in this country, we have an option because if you don't want to do that, you can go on welfare.

Mr. BECERRA. That's not true. You cannot be an able-bodied adult and turn down a job and apply for welfare and receive it. And if we know of instances of that, we should quickly contact the attorney general's office in whatever State that is because that is a case of fraud and perhaps probably mismanagement more on the part of that county welfare office that provides welfare to somebody who is willingly turning down jobs that are offered to him or her.

Mr. BONO. Are you saying there's no fraud in the welfare business?

Mr. BECERRA. There is, there is. Absolutely there is.

Mr. BONO. I would say it flourishes. I just think that you have a natural situation here where you have people who want the job and people here who don't want to take it and people who could

really use that money and who would be more than willing to take that money. Why not give it to them?

Mr. BECERRA. Mr. Bono, if I could ask you a question, those individuals from these other countries who would love to have that work, you think that because they are willing to work in this country and give of their labor, they should also have the right to stay here and not only work temporarily?

Mr. BONO. If they can't, and can't come over and be guaranteed permanent employment under whatever basis, just for them to get the guaranteed employment, where in their own country they're not guaranteed any employment and probably can't get any employment. That is better than the other. From a logical standpoint, one thing is horrible, and the other is much better, and you can put food on the table for your family. I'm sure that they would take that choice. Why not give it to them? The other thing is, being a restaurant owner, at a certain point, my style of restaurant anyway, you make about a penny on a dollar. If any more regulations come in, you make nothing on a dollar. It's not that you are a bad guy that you are offering minimum wage; it's that's all you can handle, that's all your business can handle. Then you get down to the choice of either going out of business or hoping that people will take those jobs at that price, but if they won't, there is a breaking point where you say, "I'm out of here." The only guy that doesn't get paid is the owner, and I've had that happen to me. So, it's a sad situation where you could employ people, everybody could get a paycheck, but because of regulations and restrictions, that—we don't do it, and we get into all this convoluted rhetoric. I think if you get down to basics, there's nothing wrong with employing people.

Thank you.

Mr. SMITH. Thank you, Mr. Bono. Mr. Bryant.

Mr. BRYANT of Tennessee. Thank you, Mr. Chairman. I'll yield my time back to you.

Mr. SMITH. Thank you, Mr. Bryant. We'll reward you in the next panel. [Laughter.]

Mr. FRASER, a couple of more questions occurred to me. We were talking about numbers on both sides a minute ago. What is the Department of Labor's estimate as to the number, total number, of migrant workers and guest workers?

Mr. FRASER. The total agricultural worker population in field crops is 1.6 million of whom about 42 percent or 700,000 are migrant workers. Those are our best estimates.

Mr. SMITH. One point 6 million fieldworkers of whom how many are migrant workers?

Mr. FRASER. Forty-two percent or 670,000–700,000 out of a total estimated hired farmworker population of 2.5 million. So, the difference between the 1.6 million and the 2.5 are in livestock, fish, poultry, nonfield crop type agricultural employment.

Mr. SMITH. What is the Department of Labor's estimate as to the influx of new guest workers each year?

Mr. FRASER. Legal H-2A workers in 1994, legal, nonimmigrant agricultural workers was about 13,000. My understanding was that the——

Mr. SMITH. I guess I'm trying to get to the turnover as far as the 1.6 million every year.

Mr. FRASER. In terms of the illegal portion of that population?

Mr. SMITH. How many would you estimate are working year after year, of the 1.6 million, and how many are coming into the country new every year?

Mr. FRASER. I'm—we can check and see if we have that information, Mr. Smith, and give that to you. I'm not sure if we know the inflow and outflow in that population, but we'll try to check and see if that's available through the NAWS.

Mr. SMITH. OK, thank you.

One point 6 million fieldworkers, of whom 42 percent are migrant workers moving around with the crops themselves?

Mr. FRASER. Yes, sir.

Mr. SMITH. Would you say that half of those individuals are in California?

Mr. FRASER. No, sir, I think I might have—we can perhaps provide that for you, too. California is one of the separable regions in the NAWS, and we may have that population information for you. [The information follows:]

Since the Department of Labor's National Agricultural Worker Survey (NAWS) does not survey workers who leave farm work, the proportion of farmworkers who choose this route cannot be determined directly. However, more than one-in-ten active farmworkers is new to farm work each year. If we were to assume that the population of migrant farmworkers is relatively stable from year to year (though employer surveys show slowly declining labor demand), the number of active farmworkers who leave each year would equate to the number of workers who start farm work for the first time. This assumption would mean that an estimated 160,000 farmworkers exit annually to engage in other pursuits.

As noted, NAWS reveals that more than one-in-ten active farmworkers is new to farm work every year. Nearly nine-out-of-ten (88 percent) first-year farmworkers are foreign born, 10 percent are U.S.-born Hispanics, and just 2 percent are U.S.-born non-Hispanics.¹ This does not imply, however, that the foreign-born first-year farmworkers are necessarily unauthorized illegal migrants—this group would include individuals in this country legally and authorized to work here, including refugees, persons who immigrated as children with their parents, and others who come to the country through family reunification.

Mr. SMITH. Mr. Fraser, thank you for your testimony today.

Mr. FRASER. Thank you, Mr. Chairman.

Mr. SMITH. I'll yield briefly to Mr. Berman.

Mr. BERMAN. I would say to Mr. Bono that there is a price at which I would quit this job tomorrow and go to work as a busboy in your restaurant. In other words, maybe if you'd offered a little bit more money, you would have gotten more people applying for the job.

Mr. BONO. Can I respond? What if I don't have any more money, the business doesn't have any more money and I can't offer you any more money?

Mr. BERMAN. That's not a justification. In a free market economy, if we're creating a guest worker program, to have foreign workers who will work—everything that the Republican revolution is about, free markets, getting people off of welfare, work ethic, is impeached by the notion of creating a foreign guest worker program.

¹Source: "Migrant Farmworkers: Pursuing Security in an Unstable Labor Market," U.S. Department of Labor, May 1994.

Mr. SMITH. Mr. Berman, we will continue this discussion as we go along.

Mr. BERMAN. I just want my own question. I am told that—does this figure sound right to you?—about 70,000 farm workers in the country registered for work at job service offices throughout the Nation, you know, different State employment development departments like we have in California. Another 20—70,000 who registered were never referred a job. Another 25,000 were referred but not placed. Does that seem—

Mr. FRASER. Those sound like correct statistics, Mr. Berman.

Mr. SMITH. Again, thank you, Mr. Fraser. We appreciate your being here.

Would the second panel come forward? It consists of Richard Estrada from the Dallas Morning News, a member of the U.S. Commission on Immigration Reform; Prof. Monica Heppel, Inter-American Institute on Migration and Labor from Mount Vernon College, director of research, Commission on Agricultural Workers; Prof. J. Edward Taylor, Department of Agricultural Economics, University of California at Davis, and Prof. Mark J. Miller, Department of Political Science and International Relations at the University of Delaware. If you all would take your seats. We welcome you. And we will begin with Mr. Estrada.

STATEMENT OF RICHARD ESTRADA, ASSOCIATE EDITOR OF THE EDITORIAL PAGE, DALLAS MORNING NEWS, AND MEMBER, U.S. COMMISSION ON IMMIGRATION REFORM

Mr. ESTRADA. Good morning, Mr. Chairman and members of the committee and subcommittee.

Thank you kindly for giving me the opportunity to testify before you today. I'm honored to have been invited. My name is Richard M. Estrada. I'm a native of New Mexico currently based in Dallas. I hold the title of associate editor of the editorial page of the Dallas Morning News. I am also a columnist under contract to the Washington Post Writers Group. In addition, I am a member of the U.S. Commission on Immigration Reform, a nine-member bipartisan panel appointed by Congress. A political independent, I happen to have been appointed by the Senate Republican leadership.

The Commission on Immigration Reform has already strongly recommended against the revival of an agricultural guest worker program, such as the one that occurred under the terms of the so-called *bracero* agreement, in effect from 1942 to December 31, 1964.

The internal deliberations of the Commission have not always been studies in harmony, but it may interest you to know that on no issue has there been greater agreement than on this one. Simply stated, the Commission, which substantially represents a very broad spectrum of views and opinions on immigration, does not consider a revived agricultural guest worker program to be in the national interest. If I may, I would like to give you my reasons as to why this is so.

First I'd like to go into the issue of free versus unfree labor. I oppose new or expanded agricultural guest worker programs because they represent "unfree" labor. Doubtless, some will immediately object to the use of this term because all the workers in

question would presumably come to America willingly. Despite uncertainty about the circumstances under which guest laborers in such programs are selected, let us concede for the sake of argument that all guest workers do, in fact, come willingly. One must still insist that the absence of slavery does not imply the presence of freedom.

As commonly understood, the term "free labor" also implies that an individual can sell his or her labor on the open market to whom-ever will contract for it. It is in this regard that the guest worker programs are, by definition, unfree labor arrangements, or, at the very least, not totally free labor arrangements.

To be specific, the agricultural guest worker is explicitly obliged not to sell his or her labor anywhere else but to the agricultural employer who sponsors entry. Employers tend to prize guest workers for their abilities, true, but they also value them because they have no option, and are, therefore, more malleable, although employers tend to prefer the term "disciplined."

This basic characteristic is the ugly underbelly of any and all agricultural guest worker programs. The foreign worker is virtually indentured to the agricultural employer, with an important exception. Unlike indentured servitude as practiced in America in the 18th century, the guest worker has no expectation based in the legal provisions of their entry that he or she will become a free laborer in America.

In addition, guest worker programs tend to have no worker protections. When it comes to housing and health care, uneducated and often illiterate guest workers who often do not command English and who have little or no disposable income are left to fend for themselves. There are thousands of such people roaming the agriculture-based communities of America today. Reasonable and honorable people may disagree about guest worker programs in general, but the specific practice of providing no meaningful worker protections in this manner is unacceptable. It is wrong. It is immoral.

Finally, Congress should consider that the bracero guest worker program implemented in 1942 under extremely—was implemented in 1942 under extremely unusual conditions. With millions of native-born rural workers suddenly called off to war, turning to foreign labor through a temporary guest worker program was justified. I underscore, the temporariness was not just a reference to the guest worker's term here in the United States; the program itself was supposed to be temporary. Even so, the fact that it took over 20 years to end the bracero program, long after the end of the Second World War, should give Congress pause about reintroducing it at this time. Cheap, unskilled foreign labor has proven to be an opiate to agricultural employers. Congress should dispense it sparingly, if at all.

I recently heard testimony from growers in Fresno about what they termed a very serious labor shortage in the early fall of 1990. However, a review of economic data pertaining to the raisin industry at the time found that at the height of the alleged shortage, they offered a piece rate increase of a few pennies, at best, this during a time in which the value of the California raisin industry was in dramatic ascent.

Indeed, one gets the feeling that when growers say they can't find workers, they fail to complete the sentence. What they really mean is that they can't find workers at the extremely low wages and working conditions they generally offer.

There is no reason to question the sincerity of agricultural employers when they talk about the possible ruination of their enterprises and when they are doubtless concerned that American consumers will not be blessed with the fruits and vegetables of their labor, or that of their guest workers. However, I would suggest that if Congress is to examine the full panoply of factors, it must consider a fundamental point of economics that agricultural employers almost never volunteer. To wit, the greater the number of workers there are vying for a particular job, the lower the wages and working conditions agricultural employers will be obliged to offer. It is an iron law of economics.

Congress has considered these issues before. Some, if not all of you, will recall that a landmark legislative compromise occurred less than a decade before. It has already been talked about this morning. Agribusiness now says that we should forget about the compromise and revise the bracero agreement. Once again, I recommend against it.

Finally, I should like to talk about external costs. About three weeks ago, at that hearing in Fresno, I heard Mayor Jim Patterson complain that the residents of his agriculture-based city are currently paying what he calls a large immigration tax. Mayor Patterson specifically blamed this unwritten and unlegislated tax on the Federal Government because of the failure to control immigration.

In truth, a gamut of publicly-funded costs must be considered by policymakers who seek to ascertain the impact of legislating an expansion of foreign agricultural labor. Assuming for the sake of argument that the workers and their families do not access the welfare system, policymakers should consider costs relating to basic services such as running water and wastewater, street maintenance, police and fire services, public health services, publicly-funded housing, the administration of justice, food and shelter for prisoners, public education, heightened unemployment and underemployment, and the consequent utilization of unemployment and other benefits by displaced citizens and other legal residents.

Mr. SMITH. Mr. Estrada, I'm afraid we'll need to go on. Are you to the end there?

Mr. ESTRADA. I'm here at the end here.

I would like to conclude by saying that when the United States went to war in the Persian Gulf a few years ago, we as a Nation were hugely embarrassed when upon liberating Kuwait we discovered that country's exploitative guest worker system. In Kuwait, guest workers were seen as being good enough to do the dirty work of their hosts, but not good enough to become full members of the polity.

If Congress wishes to invite people on a permanent basis to do that dirty work and give them the opportunity to become full members of the polity, then Congress should do that. But as it stands right now, I cannot recommend a Kuwait-style of guest labor for this country.

Thank you.

[The prepared statement of Mr. Estrada follows:]

PREPARED STATEMENT OF RICHARD ESTRADA, ASSOCIATE EDITOR OF THE EDITORIAL PAGE, DALLAS MORNING NEWS, AND MEMBER, U.S. COMMISSION ON IMMIGRATION REFORM

INTRODUCTION

Mr. Chairman, thank you kindly for the opportunity to testify before you today. I am honored to have been invited. My name is Richard M. Estrada. I am a native of New Mexico, currently based in Dallas, Texas.

I hold the title of associate editor of the editorial page of The Dallas Morning News. I am also a columnist under contract to the Washington Post Writers Group. In addition, I am a member of the U.S. Commission on Immigration Reform, a nine-member bipartisan panel appointed by Congress. A political independent, I happen to have been appointed by the Senate Republican leadership.

Also for the record, I would like to note that in 1986 and 1987 I worked for the Center for Immigration Studies and the Federation for American Immigration Reform. The following testimony is based on years of personal interest in and professional investigation into the issue.

My most recent fact-finding trip occurred last month, when I traveled to the state where the question of foreign agricultural labor is most prominent, California. There I met with some of those who most fervently support as well as those who most fervently oppose the revival or expansion of agricultural guest worker programs. I sincerely hope the facts and viewpoints I present here today will be of some use to you and your colleagues as you craft immigration-related policy in this area.

The Commission on Immigration Reform has already strongly recommended against the revival of an agricultural guestworker program, such as the one that occurred under the terms of the so-called Bracero Agreement, in effect from 1942 to December 31, 1964.

The internal deliberations of the Commission have not always been studies in harmony. But it may interest you to know that on no issue has there been greater agreement than on this one. Simply stated, the Commission, which substantially represents a very broad spectrum of views and opinions on immigration, does not consider a revived agricultural guest worker program to be in the national interest. If I may, I would now like to give you my reasons as to why this is so.

FREE VS. UNFREE LABOR

I oppose new or expanded agricultural guest worker programs because they represent "unfree" labor.

Doubtless, some will immediately object to the use of this term because all the workers in question would presumably come to America willingly. Despite uncertainty about the circumstances under which guest laborers in such programs are selected, let us concede for the sake of argument that all guest workers do in fact come willingly.

One must still insist that the absence of slavery does not imply the presence of freedom. As commonly understood, the term free labor also implies that an individual can sell his or her labor on the open market to whomever will contract for it. It is in this regard that guest worker programs are, by definition, unfree labor arrangements, or, at the very least, not totally free labor arrangements.

To be specific, the agricultural guest worker is explicitly obligated not to sell his or her labor anywhere else but to the agricultural employer who sponsors entry. Employers tend to prize guest workers for their abilities, true. But they also value them because they have no options, and are therefore more malleable. (Employers tend to prefer the term "disciplined.")

This basic characteristic is the ugly underbelly of any and all agricultural guest worker programs: the foreign worker is virtually indentured to the agricultural employer, with an important exception. Unlike indentured servitude as practiced in America in the 18th century, the guest worker has no expectation based in the legal provisions of their entry that he or she will be able to become a free laborer in America.

In addition, guest worker programs tend to have no worker protections. When it comes to housing and health care, uneducated and often illiterate guest workers who often do not speak English and who have little or no disposable income are left to fend for themselves. There are thousands of such people roaming the agriculture-based communities of America today. Reasonable and honorable people may disagree about guest worker programs in general, but the specific practice of providing

no meaningful worker protections in this manner is unacceptable. It is wrong. It is immoral.

Finally, Congress should consider that the "Bracero" guestworker program was implemented in 1942 under extremely unusual conditions. With millions of native-born rural workers suddenly called off to war, turning to foreign labor through a temporary guestworker program was justified. Even so, the fact that it took over twenty years to end the Bracero program, long after the end of the Second World War, should give Congress pause about reintroducing it. Cheap, unskilled foreign labor has proven to be an opiate to agricultural employers. Congress should disperse it sparingly, if at all.

"NEEDS" OF GROWERS AND CONSUMERS

A serious analysis of the agricultural guestworker issue must of course weigh the arguments of those who are lobbying for an expansion in the supply of agricultural guestworkers. In particular, fruit and vegetable growers routinely maintain that a sizable and replenishable foreign agricultural labor supply is imperative, not only for their own economic survival, but also for the benefit of the American consumer at large.

In promoting their demands, growers routinely raise worst-case scenarios. They invoke the specter of produce rotting in the fields, as a direct result of an insufficient labor supply. They also allege that, absent whatever levels of foreign labor they may demand at any given time, consumers will be obligated to pay sky-high prices for their fruits and vegetables.

Such arguments possess elements of truth. Common sense says that having too few workers may indeed result in an inability to pick an entire crop, especially within the limited window of opportunity that some, but not, all growers have. And, should the crop yield be insufficient to meet consumer demand, the most basic law of economics says that the greater the demand, the greater the price of the produce will tend to be.

Still, these arguments must be placed in context. The first thing to note about them is their absolute or extreme nature. Virtually no one other than agricultural employers is implying that any labor shortage at all is occurring or is about to occur. Anyone who reviews the historical record will find that allegations of actual or impending labor shortages have been common in this debate, but that actual labor shortages have been rare.

Consider the unfounded scare about shortages of apple pickers in Washington state in 1987. Or the enormous oversupply of labor that obtains in California normally, as proved by unemployment figures in agricultural regions of the state.

I recently heard testimony from growers in Fresno about what they termed a very serious labor shortage in the early fall of 1990. However, a review of economic data pertaining to the raisin industry at the time found that at the height of the alleged shortage, they offered a piece rate increase of a few pennies, at best. This during a time in which the value of the California raisin industry was in dramatic ascent.

Indeed, one often gets the feeling that when growers say they can't find workers, they fail to complete the sentence. What they really mean is that they can't find workers at the extremely low wages and working conditions they offer.

Aside from wages and working conditions, Congress would be well advised to study the issue of living conditions. In many cases, agricultural employers are hiring workers who live in the worst conditions imaginable. Lest anyone think I am exaggerating, consider the case of Mexican agricultural workers in northern San Diego County, California. For years, this region has seen agricultural workers literally live in holes in the ground that have been lined with plastic. These are popularly called "spider holes."

Around Fresno, to the north, they have been known to live in cars or in the most primitive tin and cardboard shacks. This represents no improvement over the situation in Texas some twenty years ago, when rural laborers were found to be living in chicken coops. In contrast, the rural unincorporated subdivisions of the Mexican border are castles. The colonias are unincorporated rural subdivisions lacking services and featuring the worst public health menace in America.

In a situation where workers routinely endure such deprivation, California agricultural experts say that projected labor shortages have proven to be largely mythical. The number of people currently residing in the United States who want to work is simply too great. Once again, when considering the contrary arguments of growers, Congress should ask itself fundamental questions about wages and working conditions.

One of the most renowned agricultural economists in the world, Professor Philip Martin of the University of California at Davis, says that contrary to grower argu-

ments, U.S. agribusiness has consistently experienced a labor oversupply. He does not see a shortage on the horizon.

As for the "need" of consumers for cheap fruit and vegetables, one might also allege a "need" for inexpensive but high quality automobiles. But having a "need" does not automatically imply that the nation should expand the supply of unskilled foreign labor supply in order to meet that need. Field labor is but a small percentage of the retail price.

Again, the question is not so much whether consumers will be deprived of fruits and vegetables, but what price the free market will oblige them to pay. Even then, it is not as if the demand for fruits and vegetables is inelastic. People will forgo or buy less of what they cannot afford. Strawberries are not essential to human survival.

In America, products are supposed to be offered for sale in a free market. There is no God-given right to cheap and exploitable foreign labor, and there is no God-given right to cheap fruits and vegetables. Yet such an assumption is inherent in many of the arguments made by agribusiness.

Later in my comments, I will consider the factor of "external" costs related to foreign agricultural labor. Such costs raise a legitimate question as to whether the constant replenishment of the agricultural labor supply represents a de facto labor market subsidy to growers that is being unwittingly paid for by all taxpayers.

Arguments about skyrocketing prices for produce should be carefully analyzed against the historic record. In the years leading up to the termination of the U.S.-Mexico agricultural guestworker accord, or Bracero Program, at the end of 1964, growers routinely argued that a lack of labor would cause the price of tomatoes to skyrocket. Instead, the price fell.

Why? Because the sudden decline in the volume of available agricultural labor promoted the development and availability of something that growers often refuse to discuss openly—the introduction of mechanization in the tomato industry. Mechanization not only staved off the economic ruination that agribusiness had warned against, it also increased efficiency and productivity and actually led to a drop in prices.

Congress may wish to note that within the last two months, Florida sugar cane growers have finally decided to mechanize because of world competition on the global sugar market. Sadly, this is occurring some 30 years after Edward R. Murrow's famous expose of brutal working conditions in Florida agriculture in the celebrated documentary, "Harvest of Shame."

Now, it is true that not all categories of produce lend themselves to mechanization. But the basic point is that a blind acceptable demands for additional foreign agricultural labor will help ensure that such alternatives never materialize. It will actually promote the continuation of a labor intensive system. If Congress is concerned with the nation's increased economic efficiency and productivity, it may wish to ponder what a continued blind reliance on labor intensiveness in agriculture implies for the country over time.

There is no reason to question the sincerity of Agricultural employers when they talk about the possible ruination of their enterprises. And they are doubtless concerned that American consumers will not be blessed with the fruit—and vegetables—of their labor, or that of their guestworkers.

However, I would suggest that if Congress is to examine the full range of factors, it must consider a fundamental point of economics that agricultural employers almost never volunteer: To wit, the greater the number of workers there are vying for a particular job, the lower the wages and working conditions agricultural employers will be obligated to offer.

Congress has considered these issues before. Some if not all of you will remember that a landmark legislative compromise occurred less than a decade ago, in the context of the 1986 Immigration Reform and Control Act, also known as the Simpson-Rodino bill. At the time, agricultural interests said they would be satisfied by an expansion in the number of agricultural workers through a Special Agricultural Workers provision. Nearly 1.1 million formerly illegal aliens purporting to be agricultural workers were granted legal status in a program saturated with fraud.

Keep in mind that the main point of the 1986 act was to implement an employer sanctions mechanism that would allow the United States to control illegal immigration. After having agreed to the legislation because of the legalization of agricultural workers, agribusiness is, in effect, now coming back to repudiate the compromise of 1986 and ask for still more foreign agricultural labor.

The difference is that this time around they do not want such labor to be afforded the opportunity to legalize. This time, they do not want totally free labor. This time, they want guest workers.

According to testimony I heard from the agribusiness and its representatives in California last month, the new request is predicated on the assumption that loopholes in the employer sanctions law of 1986 may actually be plugged by Congress in the near future. They referred specifically to the expected passage and implementation of a worker verification system.

If that happens, agribusiness fears a decline in its labor supply. In this regard, Congress should know that a representative of the Western Grower-Shipper Vegetable Association publicly stated last year that illegal aliens comprise 50 percent of the work force of the Santa Maria Valley in Santa Barbara County, California. This is not necessarily evidence that only alien workers are available, but rather that the growers are hiring large numbers of aliens.

Congress should take careful note of what this new argument is really saying. In effect, growers are claiming that while agribusiness is not knowingly hiring illegal aliens—an act that is illegal under the 1986 legislation—they are nonetheless fearful that if the law is actually enforced, agribusiness will have fewer illegal aliens to hire.

I have not specific evidence to justify the assertion that agricultural employers are knowingly hiring illegally aliens as defined under IRCA, and I will not make that charge here. Yet, whatever defense they may raise in the context of the confusion over work eligibility documents—the factor cited as the main drawback to effective employer sanctions enforcement—that cannot be permitted to cloud the fact that the growers are fundamentally opposed to the spirit of the 1986 act, which, to repeat, is the reduction and control of illegal immigration.

Agribusiness now says we should forget about the compromise of 1986 and revive the so-called Bracero Agreement or expand the H-2A program. Before Congress acquiesces in such a request, it may wish to weigh the growers' assertions against powerful evidence from many agricultural areas that unemployment is high in rural labor sectors. That certainly was the message I recently heard during a visit to Fresno.

Moreover, labor economists point out that California agribusiness in particular does not want so much a stable supply of labor, but rather a dependable system of constantly disposable and replenishable labor. Foreign labor is best for their needs precisely because it represents a never-ending pool, and because the constant replacement of such labor ensures that the entire workforce will, in the classic phraseology of those who are familiar with the bottom line of illegal or legally admitted but not totally free labor, "work hard and scared."

Those who doubt this should inquire about the labor made legally available to growers by Congress a decade ago. Reports emanating from California note that formerly illegal aliens that were legalized under the 1986 Special Agricultural Workers provision are today deeply concerned that they are about to be displaced by a new agricultural guest worker program, or the expansion of an existing one. They fear being tossed aside as the next victims of what might be called the Dixie Cup system of labor replenishment.

In my opinion, they are right to be afraid. Long-time observers know that the constant replacement and replenishment of labor is the Holy Grail of the agribusiness labor system.

In passing, I should also note the important side issues of unemployment benefits and Social Security taxes. Illegal aliens are not eligible for unemployment benefits, which, in the case of unemployed legal workers, are charged against an account for which the individual employer is responsible. Citizens and legal residents are eligible for such benefits. In effect, agricultural employers end up paying around four percent less for those workers who are not eligible for unemployment benefits than for those workers who are.

By itself, that may be a compelling reason for agricultural employers to promote a constant supply of labor that is not eligible for the benefit made available to legal residents. More dramatic still is the factor of Social Security taxes. Hiring foreign workers for whom Social Security taxes are not paid represents nearly a 15 percent wage premium right off the bat. No matter how hard a citizen of the United States may work in the fields, these factors represent two strikes against his or her employment in the agricultural sector.

Congress should consider such points the next time it hears that illegal aliens and guest workers do jobs Americans won't do. Still, to focus only on the costs of labor in the fields would be to miss one of the most important facets of the entire issue. Congress would be well advised to weigh other real-world costs, as well.

On November 15, about three weeks ago, I was present at a hearing of the U.S. Commission on Immigration Reform in Fresno. The hearing dealt with the issue of agriculture and foreign workers. That hearing only underscored a point that has been made time and again throughout the Southwest and West, in particular, illegal immigration and legalized illegal aliens represent costs for the nation that go far beyond the cost of their labor.

In Fresno, I heard the testimony of Mayor Jim Patterson, who complained that the residents of his agriculture-based city are currently paying what he calls "a large immigration tax". Mayor Patterson specifically blamed this unwritten and unlegislated tax on the federal government.

Specifically, he complained about Congress' failure to control the borders. He pointed to specific areas in which his city will no longer be receiving funding from the federal government because of congressional reforms. He also linked the growing social and budgetary impact of massive legal and illegal immigration to the unprecedented ballot initiative to deny public benefits to illegal aliens, known as Proposition 187. At the same time, however, he expressed support for an agricultural guest workers program.

Both he and all other electrical officeholders interested in this public policy issue, including Congress, may wish to ask themselves if we as a society can have it both ways. In other words, can we lament the consequences of the expansion of the low-skill, low-wage labor supply and then turn around and lobby for the admission of still more of that labor?

It may make political sense in areas and states where agriculture is a powerful industry, but does it stand the test of common sense? Does it make budgetary sense? Is it in the national interest?

In truth, a gamut of publicly-funded costs must be considered by policy makers who seek to ascertain the impact of legislating an expansion of foreign agricultural labor. Assuming for the sake of argument that the workers in question and their families do not access the welfare system, policy makers should consider costs relating to basic services such as running water and wastewater, street maintenance, police and fire services, public health services, publicly-funded housing, the administration of justice, food and shelter for prisoners, public education, heightened unemployment and underemployment and the consequent utilization of unemployment and other benefits by displaced citizens and other legal residents.

In Fresno alone, huge increases in waste water flows have obligated the city to build a \$200 million expansion to the city's waste water treatment facility. After investigating the heightened demand, city authorities routinely found examples of families with 10, 12 and even 15 children, and a total of 20 or 30 people living in one- or two-bedroom apartments, according to Mayor Patterson.

Also, Congress should consider that just because it is difficult to put a price tag on a concept such as the dilution of quality of life stemming from overcrowding, that does not mean that such a price is not being paid.

When one takes into consideration the gamut of costs that U.S. citizens and legal residents are paying as a direct result of the large-scale presence of foreign agricultural workers, illegal and legal, the residents of an individual community such as Fresno are not the only ones who are being impacted. Other agriculture-based communities, the citizens of California as a whole and the citizens of the United States also pay for such costs to one extent or another.

Agricultural work is by definition seasonal. Yet, regardless of theory, the fact remains that even after the harvest season is over, the agricultural laborers often remain. Congress should fully understand the implications of too easily acquiescing in demands for massive influxes of additional foreign agricultural labor, *ex ante*—that is, before there is evidence of need—instead of *ex post*.

Regardless of whether inexpensive alien agricultural labor helps keep the costs of fruits and vegetables down for consumers, it must be weighed against the costs that are external to the economic activity in agriculture itself. When the gamut of associated public costs are taken into consideration, such additional costs can only be perceived, in my opinion, as a labor market subsidy paid for by the public to the agricultural employers. I have not ventured to estimate the size of that subsidy. But surely it is in the hundreds of millions of dollars.

Agribusiness routinely talks about the high quality of its produce. At that real-world rice, it had better be very good indeed. Whatever else one may say about this situation, I consider it to be fundamentally antithetical to the principles of a free market. When the economics of agricultural labor is weighed in its totality, there is reason to ask whether agribusiness today is privatizing the profit while commonizing the cost.

SOCIAL CONSEQUENCES

For about a quarter century now, the United States has been experiencing what immigration experts have called the Fourth Wave of American immigration. In 1965, Congress reintroduced mass immigration after a hiatus of some 40 years.

All evidence indicates that it did not understand the consequences of the new policy. Indeed, the history of modern U.S. immigration policy is the history of dealing with the unintended consequences of each new policy shift.

The current wave of immigration is the first one to occur in America's post industrial era. Similarly, it is the first one to occur since the creation of the modern American welfare state. Both these facts have enormous consequences for our society.

This is not the place to explore the factors related to socioeconomic polarization in the United States today. Suffice it to say that labor experts routinely note that the prospects of upward mobility in the country today are not what they once were. Prospects are best for people with relatively high levels of skills and education, and, logically, they are worse for people with few or no skills and little or no education.

More to the point, the jobs being created today are in the higher end, not the lower end. Simultaneously, immigration today accounts for about 40 percent of labor force growth and about 40 percent of population growth. Against this backdrop, Congress should ask itself whether expanding the supply of low-skill and often uneducated labor is advisable.

The proponents of a revised agricultural guestworker system or of the expansion of an existing program such as H-2A will likely argue that such observations are irrelevant to their case. After all, they say, the introduction of low-skill labor they are calling for is "temporary." Moreover, the proponents of such programs have also suggested that the revival of "Bracero" or the expansion of H-2A will in fact serve to diminish the pressures of illegal immigration.

To be sure, seasonal cross-border migration by young male agricultural laborers does exist. At the same time, however, it is also true that all guest worker programs have seen the refusal of substantial numbers of workers to return to their homelands. Many have either resettled their families in the United States or have established families here after having arrived.

The growers may call it "temporary" labor. Congress may call it "temporary" labor. But that does not mean that a substantial portion of that labor will in fact turn out to be anything other than permanent. In fact, this is the clear and consistent record of the Bracero Program and indeed of all "temporary worker" programs in Western countries.

As for the possibility that expanding the number of agricultural guest workers will reduce illegal immigration, the historical record simply does not bear this out. Contrary to the recently published pollyanish opinions by Professor Julian Simon and others, history indicates that the Bracero Program actually paved the way for higher levels of illegal immigration, and dug the channels deeper.

Professor Simon has attempted to buttress his argument by citing examples of very low levels of illegal immigration in the 1950s. Yet, for whatever reason, he has refused to acknowledge the year 1954, in which over one million apprehensions of illegal aliens occurred. More to the point, during the 22 years of the Bracero Program, when approximately 4.6 million braceros were admitted into the United States, no fewer than 5.3 million apprehensions of illegal aliens took place.

Congress may judge for itself whether the Bracero Program reduced illegal immigration in the past. As for the future, it may wish to consider this question in the context of the current economic turmoil in the largest source of illegal alien agricultural labor to this country, Mexico.

If history is any guide, substantial numbers of temporary guest workers will in fact become permanent members of our Society. Sometimes, this may even occur regardless of their own initial intent. Such vagaries will only increase the difficulty of assimilating low-wage, low-skill Americans of all backgrounds into the social and economic mainstream. Given that the coincidence of race and poverty is one of the most challenging issues facing the United States today, Congress may wish to consider the long-term consequences of importing more unskilled labor.

Consider the following example: Recently, the tri-countries of Ventura, Santa Barbara and San Luis Obispo counties in California were granted a Job Training Partnership Act grant of \$511,605 to retrain farmworkers. One local expert whom I have interviewed told me that the application stated in part: "Since IRCA was passed in 1986 the ranks of farmworkers have dramatically increased. The population eligible to receive these benefits (unemployment insurance) is estimated to exceed 76,500 workers" in the three countries cited.

The cost of retraining all 76,500 farmworkers in just three counties would be a staggering \$466 million. Yet, the Department of Labor has only \$82 million available nationwide to retain farmworkers throughout the United States.

I am not here to argue for greater appropriations for job training programs. But I am suggesting that Congress consider the real-world costs of expanding the agricultural labor supply, in terms of such factors as heightened unemployment and the heightened demand for social services. Without entering into the debate over devolution, I would suggest that Congress also consider this factor.

AMERICAN VALUES

As Congress considers reviving or expanding guestworker programs, it may wish to ask itself a number of basic questions. Here are a few for your consideration:

If a guest worker is tied by law to one employer, what is the range of limitations on the freedom of that guest worker? What happens if the agricultural guest worker wishes to leave the agricultural sector and work elsewhere in the U.S. economy? What happens if the guest worker falls in love and wishes to marry a legal resident? What happens if a guest worker should become the parent of a child born on U.S. soil, even if the guestworker is single?

Who, exactly, is responsible for ensuring that such guest workers do not go into other labor sectors? What, exactly, is the penalty for failure to comply with any such responsibility? Who, exactly, is to oversee the enforcement of any such rules, regulations and laws? Exactly what resources will Congress afford those given that mission?

A failure to carefully answer these and many other questions would, I believe, represent a failure on the part of Congress to ensure truth in advertising. That is to say, if Congress proposes to legislate a temporary guest worker arrangement, then Congress, in my view, has the responsibility to ensure that it is temporary. The litmus test for any guestworker program is whether that program contains mechanisms to ensure the return of a guestworker.

If, upon due consideration, Congress wishes to grant full and permanent legal status to foreigners willing to work in agriculture, then Congress should do that. But to promise one thing, while failing to ensure that the promise is kept, will only intensify the already deep frustration felt by the American people over an immigration system most of them consider to be in shambles, according to poll after poll.

Finally, when the United States went to war in the Persian Gulf a few years ago, we as a nation were hugely embarrassed when, upon liberating Kuwait, we discovered that country's exploitative guest worker system. In Kuwait, guest workers were seen as being good enough to do the dirty work of their hosts, but not good enough to become full members of the polity. Indeed, they were often treated with a disdain that recalled some of the worst features of 19th century American slavery.

Filipino domestic servants, for example, were found to have no legal rights whatsoever, their passports were found to have been seized upon admission, they represented unfree labor tied explicitly to their employers, and they were often subjected to physical and even sexual abuse. All of these excesses are exactly the kinds of things Americans have been trying to erase from their nation for decades.

But the plain fact of the matter is that agricultural guest worker programs are themselves affronts to human dignity and freedom, to one degree or another. In no western liberal democracy has such a program been successful. All of them have experienced troubling consequences. Congress may wish to consider the droll observation of one European observer of the guestworker experience: "We wanted workers, but we got people instead."

I commend you for studying this complicated and challenging issue. I fully realize the pressures you face. I wish you Godspeed. But please allow me to help you make up your mind one way or the other by taking a clear stand in my testimony here today: I cannot and will not recommend the Kuwait model of guest labor for the United States.

Thank you once again for your courtesies, and for inviting me to testify.

Apprehensions During the Bracero Years

Year:	<i>Apprehensions</i>
1942	11,784
1943	11,175
1944	31,174
1945	69,164
1946	99,591
1947	193,657

	<i>Apprehensions</i>
1948	192,779
1949	288,253
1950	468,339
1951	509,040
1952	543,535
1953	885,587
1954 ¹	1,089,583
1955	254,096
1956	87,696
1957	59,918
1958	53,474
1959	45,336
1960	70,684
1961	88,823
1962	92,758
1963	88,712
1964	86,597

¹ Operation "Wetback"

Note: Total of 5.3 million apprehensions during the 22 year period, while approximately 4.6 million braceros were admitted.

Mr. SMITH. Thank you, Mr. Estrada. Professor Heppel.

**STATEMENT OF DR. MONICA L. HEPPEL, DEAN, SCHOOL OF
POLICY STUDIES, AND RESEARCH DIRECTOR, INTER-AMER-
ICAN INSTITUTE ON MIGRATION AND LABOR, MOUNT VER-
NON COLLEGE**

Dr. HEPPEL. Good morning. I am Monica Heppel. I was Research Director for the congressionally-mandated U.S. Commission on Agricultural Workers that's been referred to. I am presently dean of the School of Policy Studies and research director of the Inter-American Institute on Migration and Labor at Mount Vernon College.

My involvement with farm labor and immigration issues date back to 1977. I welcome the opportunity to testify before the subcommittee today. I will try to observe the 5-minute limit, and members can refer to my written testimony for details.

Even though we have no specific guest worker proposal in front of us, many of the discussions and arguments that have led to this hearing and that will be presented again today are familiar. The last time Congress heard them was during the debate that preceded passage of the Immigration Reform and Control Act less than 10 years ago. That act contained numerous provisions for agriculture, including a program that provided legal status to its workforce.

One assumption that justified this generous legalization program was that employers would have time to adjust their agricultural operations in order to stabilize and retain a legal work force. The industry did not do this. While labor-intensive agriculture expanded its production and profits, no widespread changes were made in labor organization, recruitment, or management. And no significant improvements in working conditions or earnings for workers has occurred.

This cycle of using undocumented labor, Congress providing a special program to allow agricultural employers to comply with the law without changing their operations, more undocumented workers, and employers again looking to Congress for relief, must be stopped.

Historically, the widespread use of guest workers in agriculture has created more problems than it has solved. Such problems have fostered long-term patterns of illegal immigration by serving as the catalyst for both initiating and reinforcing migration streams that remain in place today. Such programs have been difficult to monitor and enforce, allowing both for abuse of workers as well as the continued employment of unauthorized workers. And they have depressed wages and working conditions in agriculture.

We have learned from experience that it is much easier to start a program for importing labor than it is to end one. And even with a program to provide foreign workers, substantial numbers of employers will choose the route of employing unauthorized workers. After terminating a government sanctioned program, migrant streams and migrant networks will continue to operate. If we deal with agricultural labor in the same way in 1995, we will soon be back here again.

Several points are often made to justify the need for more foreign workers for agriculture. The first is that only foreign-born workers are willing to do the work. The situation whereby a majority of migrant farmworkers are foreign born did not develop overnight. The Government's acquiescence to agriculture's request for foreign workers at various junctures has had a chilling effect on other labor market mechanisms. It has inhibited the use of existing technology, such as more comfortable benches in the packing sheds, conveyor belts in the fields mechanical harvesters. Easy access to labor has also reduced incentives to improve working conditions and levels of productivity. The organization of labor and methods of recruitment which now characterize the industry have developed hand in hand with the use of foreign workers. These circumstances could have been changed, can be changed, and must be changed before we consider a new program to import labor.

Another point used to justify the creation of a guest worker program is that there are not enough legal workers to get the job done. We don't know this. Data are not precise enough to determine the composition of the existing labor force. We have not tested the market, conducted pilot studies, experimented with the organization of labor or factored in the levels of unemployment and underemployment that characterize the industry.

A third argument is that for labor-intensive commodity production to remain competitive in the international market place, a special program to provide workers is needed. This economic rationale should be examined carefully. Seldom do these analyses factor in the social and economic costs of monitoring and enforcing a program, or the cost of supporting domestic workers who will continue to suffer from underemployment. Nor do the economic analyses attempt to factor in the possibility of slight reductions in profits which the industry could bear or changes in labor management that could be adopted were labor supply to be reduced. The only alternative presented is that employers would make the decision to reduce production.

It should not be the policy of the United States to support continued expansion of an industry when that expansion is possible only with continued access to new sources of cheap, foreign labor. We need to have a healthy agricultural industry in this country, but

just as we need to restructure the manner in which we deliver welfare benefits to the poor to prevent a cycle of dependency on Government handouts, we need to rethink the manner in which we support our agricultural industry. Continuous access to cheap labor can be presented as an attractive short-term solution. Yet, we firmly believe that it has and it will continue to cripple the industry and add significantly to the problems of illegal immigration for this country.

Agricultural employers and the industry as a whole have shown themselves to be extremely creative. There are multiple examples of such creativity. We are convinced that not only improved technology, but innovations in the area of labor organization, recruitment, and management in agriculture are in the best interest of both the industry and the country. Turning on the faucet to bring in more and more foreign workers, so that business as usual in the agricultural labor market can continue, is not the answer.

The bottom line is that agricultural labor problems and potential solutions should not be envisioned strictly within the context of immigration policy. When they are, we have the situation that is again confronting us: reiterations of the same problems and recurrent requests for more of the same solution, a solution that creates more problems than it solves.

Thank you.

[The prepared statement of Dr. Heppel follows:]

PREPARED STATEMENT OF DR. MONICA L. HEPPEL, DEAN, SCHOOL OF POLICY STUDIES, AND RESEARCH DIRECTOR, INTER-AMERICAN INSTITUTE ON MIGRATION AND LABOR, MOUNT VERNON COLLEGE

I am Monica Heppel. Presently I am Dean of the School of Business, Communication, and Policy Studies at Mount Vernon College and Research Director of the Inter-American Institute on Migration and Labor, both of which are located in Washington, DC. My involvement with farm labor and immigration issues dates back to 1977, when in the course of writing my doctoral dissertation, I worked as a migrant farmworker along the Eastern Seaboard. Since then I have directed a national farm labor and immigration research project for the Center for Immigration Studies and served as Research Director of the U.S. Commission on Agricultural Workers which was created by Congress under the Immigration Reform and Control Act of 1986 and which submitted its final report to Congress in 1992. I have also been involved in examining nonagricultural low-wage/low-skill labor markets and nonimmigrant guestworker programs in two research projects for the Department of Labor, and examined Mexico-U.S. immigration policy issues from a variety of perspectives, most recently in the context of the North American Free Trade Agreement.

I welcome the opportunity to testify before the Subcommittee today. As an historical curiosity it would be interesting to determine how many witnesses have been asked to respond to the agricultural industry's request for foreign workers throughout the years, how many bills have been presented and how many cumulative hours have been consumed by the same issue within the confines of Congress. My testimony today is shaped by two facts: first, that there is no concrete guestworker proposal before us to which I can respond, and second, that there is, and has been for many years, an overall agricultural labor surplus in the United States that has mitigated against the need for the agricultural industry to attempt to organize and manage its existing labor supply in new ways.

There has been a long-standing desire on the part of agricultural employers for the government to provide foreign workers for their industry.

Many of the discussions and arguments that have led to this hearing on current and proposed agricultural guest worker programs are familiar. First we have an industry that has once again come forward to admit that its employers rely on a workforce that is increasingly composed of unauthorized workers. After this *mea culpa*, we are told that if this *status quo* were to change, a serious problem would occur. This problem is identified as a critical shortage of agricultural workers and

the specter of crops rotting in the fields. Following this, a "solution" is presented—government-assisted and preferably easy and unencumbered access to foreign workers.

The last time Congress was presented with this very scenario was during the debate that preceded passage of the Immigration Reform and Control Act or IRCA. IRCA was enacted less than 10 years ago after prolonged debate and painstaking negotiations, many of which involved the agricultural industry. The final piece of legislation contained numerous provisions designed specifically for agricultural employers, including a program that provided legal status to the existing workforce. One assumption that justified this generous legalization program, a program that granted immigrant status to approximately one million formerly undocumented workers—workers who are now in the process of regularizing the status of members of their immediate family—was that the agricultural industry would then have time to adjust their operations in order to stabilize and retain a legal workforce. The industry did not do this. While labor-intensive agriculture expanded its production and its profits, no widespread changes were made in labor organization, recruitment or management, and no significant improvements in working conditions or earnings occurred. Instead, the industry, fearing a future labor shortage were it again requested to utilize a legal workforce, has come to Congress asking for another program to provide its employers with more foreign-born workers.

Providing legal status to its employees was not the only program that IRCA provided to agriculture. The enforcement of employer sanctions for that specific industry was also deferred, again to give employers time to adjust to the new "rules of the game." In addition, the ongoing agricultural guestworker program was not only retained as a safety net for the industry, but streamlined to reduce the waiting periods required prior to certification. Nevertheless, we are again discussing the possibility of providing more legal foreign workers to agriculture. This is not a good idea, nor is it likely to be more than a stop-gap measure that will allow the industry to continue to thrive only with the continual importation of labor. This cycle should be stopped.

Requests for government-sponsored and assisted programs to provide foreign-born workers to agricultural employers has a long history. Prior to the IRCA debate, Congress had responded over the years to the agricultural industry's desire for foreign workers with a range of different programs. The most far-reaching of these was a guestworker program commonly referred to as the bracero program. Braceros were contract workers who were brought into the United States from Mexico to work, primarily in agriculture. Initiated to respond to a war-time labor shortage, this program was so popular with the agricultural industry that at its peak hundreds of thousands of braceros were brought into the United States each year, and pressures to maintain it resulted in the program being reauthorized for 30 years.

While many agricultural employers were extremely fond of the bracero program, studies demonstrated the negative impact it had on wages and working conditions in the industry and the difficulties of enforcing its protective provisions with the resulting abuses of workers. Other studies documented the continuing illegal migration from Mexico and employment of unauthorized workers in agriculture during this time, despite the concurrent heavy use of bracero workers. Equally as relevant, later studies showed that recruitment under the bracero program was the catalyst for both initiating and reinforcing Mexican migration streams that remain in place today and continue to significantly intensify our current problems with illegal immigration. The economics of migration and the culture of migration that developed during the bracero program has come to characterize whole regions in Mexico and has taken on a life of its own.

Thus, we have learned from experience that: (1) it is much easier to start a program for importing labor than it is to terminate one; (2) even with a program to provide foreign workers, substantial numbers of employers, for a variety of reasons, will choose the route of employing unauthorized workers; and (3) after terminating a government-sponsored program, migrant streams and migrant networks will continue to operate, with or without government sanction. Given the lessons that can be learned from this history, implementation of a new guestworker program is not a good idea.

The short-term "solution" of more and more foreign workers for agriculture is based on faulty assumptions and is not a solution.

It is clear that immigration programs designed for the agricultural industry have not solved this industry's labor problems. Yet, agricultural labor continues to be presented within these parameters. Congress continues to be asked to provide more and more workers, and any debate or discussion, any attempts to develop solutions outside of these very specific parameters, continues to be singularly lacking.

There are a number of reasons for this and a number of questionable assumptions that should be examined. The first is that only foreign workers are willing to engage in seasonal agricultural work. There are two points I want to make in regard to this assumption.

The first is that while it is the case that we have come to the point in this country where the majority of migrant farmworkers are foreign-born, this situation has not developed overnight. When an outside force, in this case the government, has historically stepped in to provide foreign workers to an industry on a consistent basis, it is not surprising that other labor market mechanisms have not developed. This has reduced the rate of technological innovation that characterizes the industry, innovations ranging from more comfortable benches in the packing sheds, to labor-saving devices such as conveyor belts in the fields, to mechanical harvesters. Easy access to foreign-born workers and the resulting oversupply of labor have reduced incentives to improve both working conditions and levels of productivity in the industry. The organization of labor and methods of recruitment which now characterize the industry, both of which revolve around a reliance on labor contractors, has also developed hand-in-hand with the use of foreign-born workers. These are only two examples. These circumstances can be changed, and must be changed before we consider a new program to import additional workers.

The second point is that the quality of farm labor data is inadequate to precisely determine the composition of the current labor supply. This fact alone should prevent us from developing such truisms as "there are not enough legal workers to get the job done." We don't know. We have not tested the market, we have not conducted pilot projects, and we have not quantified the levels of unemployment and underemployment that characterize the industry. Such uncertainty should not be the basis for initiating government policies that would perpetuate an unsubstantiated "fact"—that there are not enough legal workers available. We do know that we are currently operating with a national labor surplus in agriculture. Under conditions of labor surpluses, there are no incentives to maximize efficient use and recruitment of a labor force.

Another underlying assumption is that the agricultural industry is special and is deserving of special government consideration. This notion is called agricultural exceptionalism. It ranges from industry-specific exemptions from the Fair Labor Standards Act to special programs to legalize one industry's workforce. While the continuation of agricultural exceptionalism in government policy is a broad-ranging topic that could consume months of Congressional deliberation, the policy with reference to immigration was debated by the Commission on Agricultural Workers, a Commission set up by IRCA that was comprised of a majority of industry representatives. The Commission's conclusion was that industry-specific legalization programs should not be the basis of future immigration policy, nor should there be special programs available only to agriculture to govern the importation of temporary nonimmigrant workers.

A factor that is often mentioned to justify the special treatment of the agricultural industry is the need for labor-intensive commodity production to remain competitive in the international marketplace. The economic rationale that has been put forward as a justification for government support should be examined carefully. Seldom do these analyses factor in the social and economic costs of monitoring and enforcing a program or the costs of continuing to support domestic workers who will continue to suffer from underemployment. Nor do the economic analyses attempt to factor in the possibility of slight reductions in profits which the industry could bear or changes in labor management that could be introduced were labor supply to be reduced. The only alternative presented is that employers would make the decision to reduce production significantly, which does not necessarily have to be the case. Furthermore, a simple supply/demand curve does not begin to capture the intricacies of world-wide markets in agriculture.

While I am sure there are many employers and producers in other U.S. industries who would sympathize with the desire for subsidies to increase international competitiveness, protectionism is not currently the policy that is being followed by the United States. Nor should it be the policy of the United States to support continued expansion of an industry, in this case the industry of perishable crop agriculture, when that expansion can occur only with continual access to new sources of cheap foreign labor, either legally or illegally employed.

Continual access to cheap foreign labor has created longterm problems for the industry and for the country.

We need to have a healthy agricultural industry in this country, but just as we need to restructure the manner in which we deliver welfare benefits to the poor to prevent a cycle of dependency on government handouts, we need to rethink the manner in which we support our agricultural industry. Continuous access to cheap

labor can be presented as an attractive short-term solution, yet I firmly believe that it has and it will continue to cripple the industry and add significantly to the problems of illegal immigration for this country. Cumulative experience has shown this to be the case.

Agricultural employers and the industry as a whole have shown themselves to be extremely creative. When the bracero program was eliminated, tomato producers quickly shifted to the mechanical harvesting of their crop. Likewise, when the H-2A program in Florida became increasingly expensive, despite years of testimony to the contrary, the sugar industry was able to turn to technological innovations and continue to harvest its crop. I am convinced that not only improved technology, but innovations in the area of labor organization, recruitment, and management in agriculture are in the best interests of both the industry and the country. Turning on the faucet to bring in more and more foreign workers so that "business as usual" in the agricultural labor market can continue is not the answer. In fact, business as usual should not continue, as the far-reaching consequences of previous agricultural foreign worker programs have demonstrated.

The bottom line is that agricultural labor problems and potential solutions should not be envisioned strictly within the context of immigration policy. When the are, we have the situation that is again confronting us—recurrent reiterations of the same problems and recurrent requests for more of the same "solution," a solution that creates more problems than it solves.

Mr. SMITH. Thank you, Professor Heppel. Professor Taylor.

**STATEMENT OF J. EDWARD TAYLOR, ASSOCIATE PROFESSOR
OF AGRICULTURAL ECONOMICS, UNIVERSITY OF CALIFORNIA
AT DAVIS**

Mr. TAYLOR. Thank you. I'm Edward Taylor, associate professor of agricultural economics at the University of California at Davis. I am also a member of the Commission on Immigration Reform's binational study, and of the IUSSP on South-North Migration. It is a privilege to be here today with you as you deliberate revised guest worker legislation for agriculture.

The purpose of guest worker programs is to add workers to the labor force without adding permanent residents to the population, but our own experience and that of other industrialized nations from Japan to Germany suggest that there is nothing as permanent as a temporary worker. The drawbacks to guest worker programs can be summarized in three words: leakages, distortion, and dependence. They're fairly well known; they're summarized in my written text.

What I'd like to do today in my oral testimony is address three main questions given the well-known drawbacks of guest worker programs. First, what economic conditions can justify a guest worker program? Second, do these conditions currently describe U.S. agriculture, or are they likely to soon? And third, if Congress decides to enact revised guest worker legislation, what economic considerations ought to be part of it?

From an economic point of view, at least three conditions are needed to justify a more liberal guest worker program. First, there has to be an excess demand for labor creating upward pressure on agricultural wages. Second, the supply of labor of U.S. workers has to be unresponsive to these higher wages. In economic jargon, the supply of U.S. labor is inelastic. Third, employers have to have a limited ability to adjust their labor demands in response to higher labor costs. That is, labor demand is also inelastic. My written testimony deals with each of these conditions in turn. Let me summarize them.

First, there's no evidence of generalized labor shortages in agriculture today. This is a different environment than Congress faced the last time it visited guest worker programs. Studies by farm labor experts around the country have been quite uniform that there is an unprecedented surplus in farm labor in the wake of the 1986 Immigration Reform and Control Act. Real wages for farmworkers, that is wages adjusted for inflation which are the right wages to look at, have fallen since 1985. There's evidence that benefits and working conditions have, too. In California, farm union certifications virtually have disappeared.

Proponents of guest worker programs probably will concede this point but then argue that a prudent farm manager cannot afford to wait until new immigration controls dry up the workforce before putting more liberal guest worker programs in place. This view seems overly pessimistic or, I suppose, optimistic, depending on which side of the fence you are sitting on.

Even if the share of undocumented immigrants or unauthorized immigrants, we should say, is say 40 percent, which probably is high, and even if new immigration enforcement is much more effective than past enforcement, the change in farm labor supply will be gradual and incremental rather than sudden and dramatic. There will be more time to adjust than many advocates of guest worker programs fear.

This leads us to the second condition for guest worker programs. Farmers complain that U.S. workers are unwilling to do farm work. This may be right given existing wages, benefits, and working conditions in agriculture. It would probably take significant changes in farm wages, working conditions, and benefits to induce large numbers of U.S. workers to go out to the fields. Your farmer constituent will then ask, "If new border enforcement dries up, decreases our supply of Mexican workers by 100, where will we get the 100 workers to take their place?" To an economist, this is the wrong question to ask, which may be why economists are not politicians. It is a supply argument that ignores the demand side of the farm labor equation. The right question is, how will farmers adjust and at what cost to themselves and society?

The demand for labor by farmers appears to be responsive to labor costs. In fact, this is much of the story of technological change in American agriculture. How would farmers adjust? First, by using fewer workers per task. Then they would seek new technologies and labor management practices. Labor-saving technologies are sitting on the shelf, and they would become viable with the higher real wages.

To take an example from a labor management side, labor contractors could move core groups of workers from farm to farm providing workers with more stable employment and earnings than individual farmers could do. Today, the opposite is happening, though. Farm labor contractors are revolving door employers of new immigrants. In California, they offer the poorest wages, benefits, and working conditions, and they have the highest worker turnover rates of any farm employer group.

There is no such thing as labor needs—this is important to remember—only labor demands at different wage rates. Immigration policies that keep wages low affect what we produce, how we

produce it, what technologies get developed, and in the long run even our comparative advantage in developing new technologies.

In summary, since my time is running out, as you deliberate on revised and more liberal guest worker programs, I urge you to keep three things in mind. First, in a labor surplus environment, the economic case for guest workers is weak. The costs to society potentially are high, regulation of guest worker programs is likely to be difficult, and this is not good news for guest workers or for the older immigrant workers already in agriculture or for the communities in which they live. Remember, the fruit and vegetable work force is an immigrant work force.

Second, there's a tendency, and one can even say an incentive, to exaggerate both the share of unauthorized workers in the work force, and how quickly and dramatically immigration enforcement could shrink the supply of farmworkers. Most of the adjustment to higher farmworker wages would happen on the labor demand side, not the labor supply side.

Third, if Congress approves a revised guest worker program, economic incentives will be necessary if we want to encourage farmers to look to the U.S. labor market, to look to new and more efficient technology and labor management practices, and to reverse, or at least arrest, what appears to be an erosion of our research and development capabilities in this area.

Thank you.

[The prepared statement of Mr. Taylor follows:]

PREPARED STATEMENT OF J. EDWARD TAYLOR, ASSOCIATE PROFESSOR OF
AGRICULTURAL ECONOMICS, UNIVERSITY OF CALIFORNIA AT DAVIS

I am Edward Taylor, Associate Professor of Agricultural Economics at the University of California at Davis. I am a member of the Binational Study established by the Commission on Immigration Reform and economist on the Committee on South-North Migration of the International Union for the Scientific Study of Population (IUSSP). It is a privilege to be able to share my views on agricultural guest worker programs with you today.

The purpose of guest or nonimmigrant worker programs is to add workers to the labor force without adding permanent residents to the population. Guest worker programs never work out that way, though, inspiring the now familiar adage that there is nothing as permanent as a temporary worker. Guest worker programs lead to permanent or long-term immigration because of leakages, distortion, and dependence. Individuals leak out of the guest worker stream, become anchors for new immigrants and create an immigration multiplier. U.S. employers change their farming practices and technologies with the "field of dreams" view that if they plant new fields, the workers will come. U.S. employers and communities in Mexico become dependent on migrant workers and on migrant earnings, respectively.

These drawbacks to guest worker programs, which I describe briefly in the Appendix, are well known. They do not necessarily mean that guest worker programs should never be implemented. However, they suggest that the economic and social costs of guest worker programs may be high, and guest workers should be used only if the benefits clearly outweigh the costs.

When are the benefits of a guest worker program for U.S. agriculture likely to outweigh the costs? Only when three conditions occur simultaneously:

First, when a demand for labor in excess of supply puts significant upward pressure on wages. I see no rationale for a guest worker program in a labor-surplus environment. I have been fortunate in helping direct a study that has brought together the leading farm labor experts in universities around the country to study immigration and U.S. agriculture. A synopsis of our work to date is attached. The overwhelming conclusion of these experts is that there has been an unprecedented surplus of farm labor in the wake of the 1986 Immigration Reform and Control Act. Real wages for farm workers—that is, adjusted for inflation—fell between 1985 and 1994. Farm union certifications fell from 421 in 1975 to 8 in 1995.

The second condition for a guest worker program is that higher wages fail to trigger an appreciable increase in the supply of U.S. workers. That is, the responsiveness of U.S. workers to wages in agriculture must be low. Farmers complain that U.S. citizens are unwilling to do farm work. This view is certainly correct given today's wages and working conditions in labor-intensive fruit, vegetable, and horticultural (FVH) production. Inducing significant numbers of U.S. workers to labor in agriculture probably would require significant improvements in farm wages and working conditions. Farmers' contention that U.S. workers are unresponsive to wages and working conditions in agriculture, or, in economists' jargon, that the *supply* of U.S. workers is *inelastic*, appears to be accurate. This is the cornerstone of the argument favor of a guest worker program for agriculture. You will likely hear today that a prudent farmer cannot afford to wait for new immigration enforcement to be successful before seeking access to guest workers.

However, this "supply" argument ignores the *demand* side of the equation. The third condition for a guest worker program is that the demand for labor also be unresponsive to wage changes. This does not appear to be the case. The *demand* for labor by farmers appears to be *elastic*; that is, it is responsive to wage changes. If border enforcement decreases the supply of Mexican workers by 100, year farmer constituents may ask: "Where will we get the 100 workers to take their place?" This is not the right question. The right question is: "How will farmers adjust, and at what cost to themselves and to the rest of society?"

If real wages for farm workers increased as a result of Immigration and Naturalization Service (INS) enforcement, farmers would adjust. They would adjust first by using fewer workers for each task, for example, by foregoing the second or third picking of a crop. They would then seek new technologies and labor management strategies. Labor contractors would have to take steps to retain core groups of workers, moving these workers from farm to farm. Some farmers would go out of business, just as some service stations did after the end of the baby boom sharply reduced the supply of teenage labor in the 1960s and 1970s. Few people would argue that guest workers should have been imported at that time to wash windshields and pump gas across America.

As my colleague Philip Martin points out, 30 years ago farmers argued that without Bracero workers the California tomato processing industry would disappear. The Bracero program ended, and today California produces four times more tomatoes than in the 1960s, and at a much lower cost. Increases in wages sparked an unprecedented technological change in tomato production. Compared to the policy shock of ending the Bracero program, the kinds of changes in farm labor supply that the INS can bring about in the 1990s are much smaller and more gradual. This leaves employers with more time to adjust their production and management practices.

THE IMMIGRANT-INTENSIFICATION OF AGRICULTURE

There have been some major changes in farm labor markets since the last time Congress visited agricultural guest worker programs, in the early 1980s. These changes have not involved a weaning of farmers from their dependence on foreign agricultural workers. On the contrary, the major innovations in western agriculture have accompanied and promoted more immigrant-intensive ways of farming.

On the labor management side, the story of the decade has been farm labor contracting. Employer sanctions accelerated a trend by farmers away from direct hiring in favor of using labor-market intermediaries. Today, an estimated 50 percent of all seasonal farm labor in California is supplied by farm labor contracts. Labor contractors could function like union hiring halls, providing core groups of workers with long-term employment by lining up a series of contracts with different farmers. Instead, lacking the incentive to retain workers in a labor-surplus environment, many are revolving-door employers of new immigrants, and their workers have the poorest wages and working conditions and the highest turnover of any farm worker group. The spread of labor contracting in its present form is a way for U.S. agriculture to adapt to more immigrant labor, not less.

On the technology side, in many cases machines to harvest crops exist, but low and falling real wages discourage their use. Labor surplus in agriculture has not only discouraged the adoption of labor-saving technologies; it also has hindered the development of new technologies and possibly eroded our nation's expertise in this area. The last two decades have witnessed a sharp decrease in government and private support for research and development of new, labor-saving technologies. Agricultural engineering departments in universities across the country have become smaller and reoriented themselves away from finding technical solutions to farmers' need for low-skill, seasonal labor. Many manufacturers of specialized machinery for agriculture have shut down. Membership in the Power and Machinery Division of

the American Society of Agricultural Engineers fell by 38 percent between 1985 and 1995, a possible indication of the loss of research and development capacity.

With an abundance of immigrant workers, FVII agriculture today specializes in providing large numbers of workers with part-time employment and below-poverty earnings. Rural communities and taxpayers are left holding the bag to provide for the social service needs of these workers and their families. From U.S. society's point of view, cheap farm workers are expensive. Almost all new farm workers are immigrants with fewer than 7 years of schooling and earning less than \$7,000 per year. Each year, the federal government spends the equivalent of 10 percent of what migrant and seasonal farm workers earn to alleviate their poverty.

In contrast, from Mexico's point of view, U.S. farmers' dependence on immigrant workers is a blessing. Earnings remitted or sent home by migrants to their families in rural Mexico are an important source of economic and perhaps also political stability in Mexico. More effective U.S. border enforcement, and large-scale technological adjustment by U.S. farmers, could change the economic and political equation in rural Mexico. Having worked for many years doing research in Mexican villages, I am sympathetic to this concern.

As far as guest worker legislation is concerned, however, at a time of labor surplus I do not believe there is a tradeoff between improving the economic lot of rural California and maintaining political and economic order in rural Mexico. Today, a more liberal guest worker program would probably create social costs in excess of the direct costs of administering the program. Farmers, would have little incentive to participate in the program and bear the costs of complying with its regulations, including regulations to protect immigrant farm workers. Regulation of a guest worker program would be extraordinarily difficult and costly in this labor-surplus environment. This means that a guest worker program would not necessarily mean an improvement in wages or working conditions for California residents or for immigrant workers.

In short, as you consider enacting a revised guest worker program for agriculture, I urge you to keep in mind three considerations:

First, in a surplus farm labor environment, the case for guest workers is weak, the costs to society potentially are high, and regulation of a guest worker program is likely to be extraordinarily difficult. A more liberal guest worker program should be seriously considered only when farmers find themselves having to make difficult adjustments to a smaller farm work force. The purpose of guest workers should not be to perpetuate a labor surplus and depress real wages for farm workers.

Second, there is an incentive for farm employers to exaggerate the share of unauthorized immigrants in the farm work force. There is also a tendency to exaggerate the swiftness with which new body enforcement efforts might affect the availability of farm workers. Even if the unauthorized-immigrant share is 40 percent and new immigration enforcement is considerably more successful than past enforcement, the changes in farm labor supply will be gradual and incremental not sudden and dramatic.

New immigration measures would be phased in over several years. They would find themselves up against a tremendous immigration momentum, reinforced by the SAW legalization program and with well-established networks of migrant contacts in the United States. Farm worker real wages would increase gradually, giving farmers time to adjust. Most of the adjustment to a smaller farm work force would occur on the labor demand side, not the labor supply side, as employers adopted new production technologies and labor-management practices.

Third, if Congress approves a revised guest worker program, I recommend using economic incentives to encourage farmers to look to the U.S. labor market and to new, more labor-efficient technologies and labor management practices. Steps should be taken to reverse or at least stop the erosion of our research capabilities for developing new, labor-saving technologies. One way to do this is to require employers to pay a user fee, at least equivalent to the cost to government of administering the program, plus a levy on wages paid to foreign workers to offset the value of any payroll taxes saved by using foreign workers. The Foreign worker levy would be put into a trust fund charged with the task of reducing the dependence of agriculture on nonimmigrant foreign workers, including the support of new research and development initiatives.

APPENDIX

LEAKAGES, DISTORTION, AND DEPENDENCE IN GUEST WORKER PROGRAMS

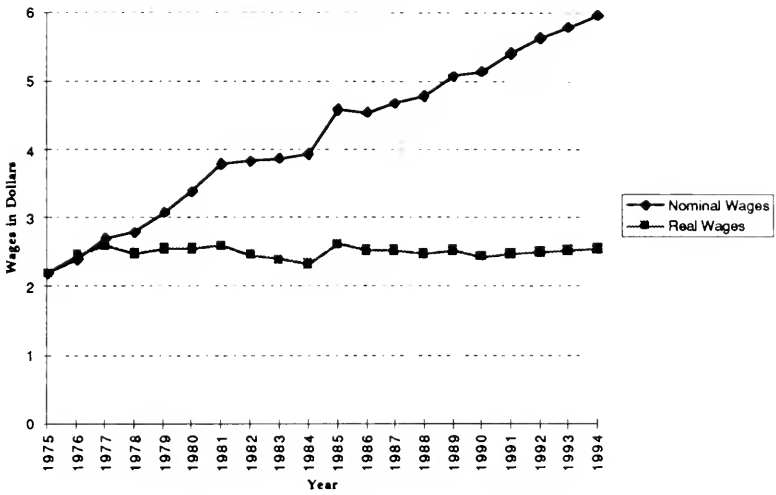
Guest worker programs lead to permanent or long-term immigration because of leakages, distortion, and dependence.

Leakages refer to some guest workers invariably developing ties to the host society and settling there. The settlement process tends to accelerate over time. Settled immigrants facilitate the immigration of relatives and friends, creating an immigration multiplier. The so-called Bracero Program (1942-1964) has been credited with laying the foundation for legal and unauthorized immigration from Mexico. From Germany to Japan, the most basic and universal lesson from worker recruitment programs is this: once set in motion, migration tends to be a self-perpetuating process, taking on a life of its own. We have yet to find a way to prevent a guest worker program from unleashing long-term immigration.

Guest worker programs create distortion and dependence in the host country. Production and labor markets are flexible; they adjust to the availability of foreign workers. Eventually, employers and local workers begin to make decision that assume foreign workers will continue to be available. This includes not only the decision of what to produce but how to produce it. Farmers adopt a "field of dreams" view that if you plant a labor-intensive crop the workers will come. Local workers exit farm labor markets impacted by the arrival of low skilled foreign workers. In most Western farm labor markets this labor-market transfusion is now complete. Today, it is older immigrants, not native workers, who leave farm work as new immigrants come.

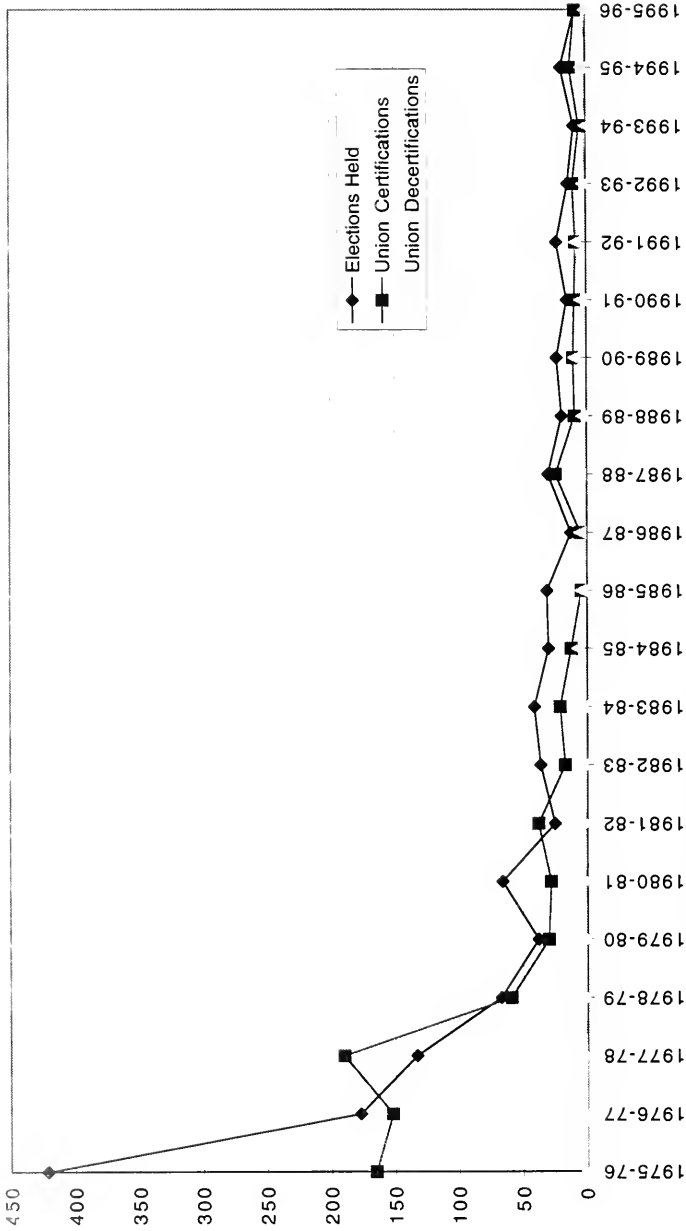
Guest worker programs also create distortion and dependence in the migrant-sending areas. Large-scale corruption and rent-seeking in the administration and distribution of work permits in Mexico, as occurred under the Bracero Program, are inevitable. Just as U.S. employers evolve to "need" immigrant workers to harvest their crops, villages in Mexico evolve to "need" earnings from migration in order to survive and prosper. Our research shows that economies of migrant-sending villages are transformed by migration, in ways that make sending migrants abroad as vital to them as commuters are to a suburban downtown. Village economies are restructured around migration.

Figure 2
Nominal and Real* Wages for Fieldworkers: U.S. 1975-1993



*Nominal wages deflated by CPI, 1975=100. Sources: USDA, Farm Labor, Bureau of Labor Statistics

ALRB Supervised Elections, Union Certifications, and Decertifications: 1975-76 to 1995-96



Source: ALRB Annual Reports. Data are for fiscal years ending June 30.
Data for 1995-96 are annualized for July-September data.

82 **Table 5 United States: Major fruits and vegetables hand-harvested, 1990**

Percentage of acreage hand-harvested	Fruits ^a	Cash receipts 1990 (millions of dollars)	Vegetables and melons ^b	Cash receipts 1990 (millions of dollars)
76-100	Apple Grape ^c Peach ^c Pear ^c Strawberry Apricot Sweet cherry ^c Grapefruit ^c Lemon ^c Plums and prunes ^c Orange ^c	1,445 1,662 365 262 594 41 119 384 278 267 1,455	Cantaloupe Lettuce Asparagus Cauliflower Peppers Broccoli ^c Celery Cabbage Cucumber ^c Mushrooms Watermelon Honeydews Sweet potatoes Onions Tomatoes ^c Carrots Sweet corn ^c Dry beans Potatoes Peas ^c Lima beans ^c Snap beans ^c	182 847 148 190 219 268 214 121 215 502 126 82 108 551 1,622 273 467 675 2,678 132 n a 204 9,416
51-75				
26-50				
0-25	Tart cherry ^c Cranberry	37 153		
Total		7,062		

n a not available

a These major fruits accounted for 92 percent of the \$7.7 billion value of all fruit sales in 1990.

b US cash receipts for vegetables and melons were \$11.5 billion in 1990, these major vegetables accounted for 80 percent of these receipts

c More than 50 percent of crop is processed

Source: US Department of Agriculture 1992. *Agriculture in a North American Free Trade Agreement* (Washington: USDA, 1992).

Immigration Reform and U.S. Agriculture

Fruit and vegetable agriculture in the United States—especially in California and the Southwest—has employed immigrant workers for over a century. But in the early 1980s, immigration reforms, and particularly the Immigration Reform and Control Act (IRCA) of 1986, threatened to eliminate easy access to foreign workers.

IRCA's passage encouraged twenty-five social scientists to study the effects of immigration reforms in major farm labor states. Their findings, now available in book form and summarized here, show that IRCA did not discourage the expansion of labor-intensive agriculture, improve wages, increase employment, or improve working conditions for U.S. farm workers; neither did it create labor shortages. IRCA did accelerate a trend already underway—the shift from direct hire of farm workers to hiring farm labor contractor farm workers.

IRCA'S agricultural provisions

IRCA includes three major provisions that potentially impact agriculture: enforcement, legalization, and opening the border for legal farm workers if IRCA creates farm labor shortages.

Enforcement

Until IRCA, the border patrol simply drove into fields and apprehended aliens who tried to run away. Harvest-time raids could be disruptive; pre-IRCA studies found that farmers avoided illegal alien workers in time-sensitive activities, such as harvesting strawberries, and were more apt to use unauthorized workers to pick less time-sensitive crops, such as citrus.

After 1988, it became illegal for agricultural employers, like employers in other sectors, to know-

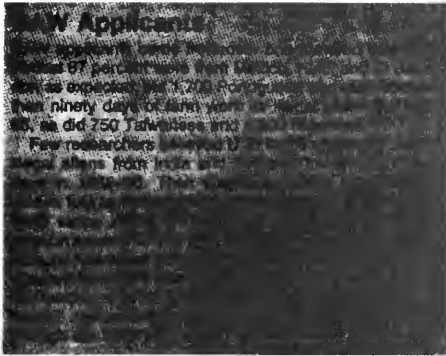
ingly hire illegal immigrants for farm work. Employers of illegal immigrants could be fined up to \$10,000 per illegal worker hired and imprisoned for repeated offenses. However, IRCA also extended a safeguard to agricultural workplaces by requiring that the Immigration and Naturalization Service (INS) have a search warrant before raiding a workplace for illegal aliens. Enforcement became more difficult. For example, one study concluded that IRCA did not affect employment or wage trends in Florida agriculture because of "lax enforcement of employer sanctions and the entry of 'documented illegals' after IRCA."

Legalization

IRCA created two programs to legalize immigrant workers. The general program granted legal status on the basis of U.S. residence since 1982 and legalized about 70,000 farm workers. In addition, a Special Agricultural Worker, or SAW, program granted legal status to illegal aliens who did at least ninety days of qualifying farm work in the twelve months ending May 1, 1986. Not only could farm workers arrive in the United States four years later and still qualify for amnesty under the SAW program, but unlike applicants to the general program, they could have left the United States after doing the qualifying farm work and apply for U.S. immigrant status from abroad.

Applicants for the general legalization program scrambled to find employment records, rent receipts, and other evidence to show continuous residence in the United States since 1982. Most SAW applicants, on the other hand, simply submitted a short letter from a U.S. employer which said, for example, "I, Labor Contractor Juan Martinez, hereby

by J. Edward
Taylor and
Philip L.
Martin



certify that Jose Carlos picked tomatoes for ninety-two days for me between June and October 1985." The INS had to accept the application unless the agency could prove that the applicant did not perform the qualifying work as claimed.

The "easy" SAW program invited fraud. The *New York Times* (12 November 1989) called the farm worker legalization "one of the most extensive immigration frauds ever perpetrated against the U.S. government." Over 1.3 million illegal aliens claimed to have done at least ninety days of farm work in 1985-86, even though U.S. Department of Agriculture (USDA) analysis of Current Population Survey data found that only 1.1 million persons performed seventy-five or more days of farm work for wages in 1985. Estimates based on pre-IRCA surveys of workers and the hours of work needed to produce fruits, vegetables, and other labor-intensive crops reinforced a USDA estimate of 350,000 illegal aliens employed in U.S. agriculture in the mid 1980s.

Safety valves

IRCA included two major types of temporary worker programs through which farmers could obtain legal foreign workers if labor shortages developed: contractual and noncontractual programs. Contractual programs tie a foreign worker to a particular job vacancy, and noncontractual programs admit foreign workers and give them work permits to hunt for jobs.

Contractual programs, such as the Bracero program (1942-64) and the H2 program, require planning. Under the H2 foreign worker program, for example, farm employers must develop job descriptions, determine the number of workers needed and when work will begin, guarantee at least the minimum or prevailing wage, arrange for free housing,

and then attempt to recruit American labor; after they convince the Department of Labor (DOL) that they cannot find sufficient American workers, can they bring in foreign workers for specific jobs. IRCA introduced a more streamlined, H2-A program that shortens the time for DOL to find U.S. workers.

However, western growers argued that ever-changing weather and crop conditions made such planning impossible. For them and most other crop farmers who found the H2-A program cumbersome, IRCA included a noncontractual Replenishment Agricultural Worker (RAW) program that could have admitted up to 1 million probationary immigrants between October 1, 1989, and September 30, 1993, to avert labor shortages due to SAWs leaving farm jobs. The number of RAWs was to be determined by the secretaries of agriculture and labor according to a complex formula. No RAW workers were admitted during the four-year life of the program, because the secretaries of agriculture and labor determined that IRCA did not create farm labor shortages. The number of H2-A farm workers has shrunk since 1986.

IRCA'S impacts on U.S. agriculture

Except for the fraudulent SAW program, IRCA did not legalize many farm workers, nor did it cause farm employers to hire only legal workers. IRCA may, however, have altered the structure of farm labor markets for years to come.

Employment, wages, and working conditions

Real wages in agriculture and other immigrant-dominated labor markets began slipping in the early

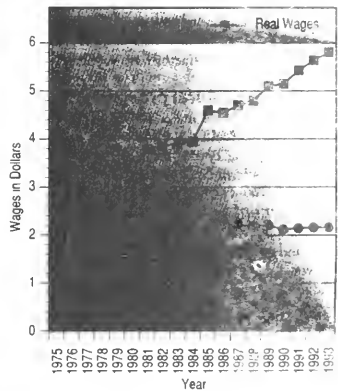


Figure 1. Wages for U.S. field workers, 1975-93

1980s (see figure 1). So did the influence of farm worker unions. The number of United Farm Workers contracts fell from 108 in 1978 to 28 in 1984–85. Minimum hourly wages in union contracts stagnated at \$5 to \$6, and piece rate wages—such as the prevailing \$0.12 cents for cutting 25 pounds of raisin grapes and putting them on a paper tray to dry in the sun—remained unchanged for most of the 1980s. Unions and others concerned about the working poor argued that illegal immigration must be reduced.

Findings by post-IRCA studies confirm that IRCA did not create labor shortages or counteract falling real wages in agriculture. Real U.S. farm wages rose slightly from 1984–85 but then fell (figure 1). IRCA did not affect employment or drive up labor costs in any major U.S. region, nor in the United States as a whole, according to researchers. IRCA had no significant impact on employment, remuneration, or working conditions for a wide range of commodities, including New York apples, Florida citrus and nursery products, and California table grapes.

In fact, labor-intensive fruit, vegetable, and horticultural production expanded after IRCA. Studies of California, Oregon, New Mexico, and Wash-

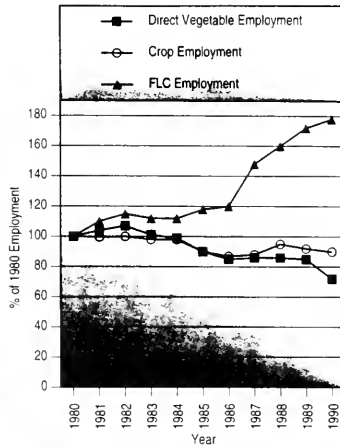


Figure 2. Total employment on California farms as percentage of 1980 employment levels, 1980-90

sector fell. Similar trends occurred in Oregon and New Mexico, in apple production in New York and Pennsylvania, and in tomato production in Florida. A rising trend in FLC use was already underway, but IRCA accelerated this trend by creating new incentives for farmers to use FLCs, as evidenced in the California data.

For decades, FLCs promised to make seasonal farm labor markets more efficient. With a comparative advantage in recruiting seasonal workers, FLCs can quickly mobilize harvest crews. Seasonal workers can benefit from the FLCs' ability to arrange for them a series of harvest jobs on different farms. But FLCs typically hold an inferior bargaining position vis-à-vis farmers who share information about what FLCs charge, and they hold a superior position vis-à-vis new and vulnerable immigrant workers. Surveys of FLCs reveal that labor contractors agree with farmers to do a job for a money-losing commission, and then violate immigration and labor laws to make a profit.

IRCA's employer sanctions make most FLCs solely liable for immigration law violations, so IRCA gave farmers an unexpected incentive to use FLCs. Many legalized workers became FLCs. Competition among FLCs made the cost of a seasonal FLC workforce as low or lower than workers hired directly.

In many cases, hiring immigrant workers indirectly through FLCs has turned the "people issue" of dealing with seasonal workers into an impersonal transaction equivalent to securing farming in-

"The fact is that cooperation is the only way to survive in the U.S. agricultural market. The United States is a free market."

ington agriculture document increased production after 1986. Nationally, the area planted in labor-intensive fresh vegetables increased 15 percent between 1970 and 1992, with nearly all of this increase occurring in the 1980s.

Study after study shows such an ample supply of labor that farmers did not need to raise wages to attract workers. Indeed, the opposite often happened. Farmers reported that in 1988–89, some workers simply joined a crew in the fields and hoped to be paid.

IRCA and labor contractors

Labor gluts in the late 1980s went hand in hand with another unexpected development—the spread of farm labor contractors (FLCs). FLCs now play an unprecedented role in the farm labor market. Seventy percent of Florida citrus growers, for example, rely on workers from farm labor contractors. In California, FLC employment surged up while direct employment in the growing vegetable

puts such as fertilizer. The separation of farm operators and farm workers and an ample supply of workers through FLCs has moved labor far down the list of priorities for many growers of labor-intensive commodities.

Why didn't IRCA produce the expected upsurge in wages and benefits?

IRCA and illegal immigration

Most pre-IRCA studies concluded that illegal immigrants filled 20 to 25 percent of seasonal farm jobs in labor-intensive commodities in California. The percentage of illegal aliens was generally lower in other states, both because legal H2 workers were employed along the East Coast, and because His-

panic workers often aroused the suspicion of enforcement authorities in states such as North Carolina, New York, and Kentucky.

The SAW program had the anticipated consequence of increasing the share of Hispanic immigrant workers in states like California, where they were traditionally employed. But it also legitimized

the presence of Latinos throughout rural America. Most of the Hispanic workers now common in rural communities have work authorization documents, but in many cases these documents were purchased from labor contractors or at flea markets, not issued by the U.S. government. Legalization taught even poor and unsophisticated rural residents in Mexico and Central America that they could purchase the documents needed to work in the United States. Researchers tried to ascertain the legal status of the workers in the areas and commodities they studied, and they found that illegal aliens were typically 25 to 35 percent of peak seasonal employment in the early 1990s and rising. After the legalization of over 1 million farm workers, this is clear evidence that illegal immigration continues.

Low-skill labor in ample supply

Our research indicates that a large supply of low-skill foreign labor will be readily available at minimum U.S. wages for the rest of this century. Farm workers will remain the "poorest of the working poor," and rural poverty will increase. ■

■ For more information

Martin, P.L., W. Huffman, R. Emerson, J.E. Taylor, and R. Rochin, eds. *Immigration Reform and U.S. Agriculture*. Available from ANR Publications, University of California, 6701 San Pablo Avenue, Oakland CA 94608-1239.

*...illegal aliens were typically
25 to 35 percent of peak seasonal
employment in the early 1990s
and rising.*

J. Edward Taylor is associate professor and Philip L. Martin is professor, both in the Department of Agricultural Economics at the University of California, Davis.



Photo by John Kelly Clark, courtesy University of California Statewide IPM Project

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Immigration Reform and U.S. Agriculture, a 580-page volume written by 25 social scientists from throughout the United States, examines surveys of workers and farmers conducted since the passage of the Immigration Reform and Control Act of 1986 (IRCA).

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 - Farm Worker Demographics: Pre-IRCA and Post-IRCA Field Workers
- Part II. Section A. IRCA's Effects in Eastern States
 - IRCA and Agriculture in Florida
 - IRCA and Apples and Vegetables in New York
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 - Immigration and Agriculture: Policy Issues
 - Agriculture and Immigration Issues in the 1990s

Two appendices include an **Executive Summary** and a thorough **Review of Data** available on agricultural labor, including discussions of the uses and limitations of each type of data. A **Foreword** by Walter Armbruster, Managing Director of the Farm Foundation, a **Glossary**, a **Bibliography** of literature cited in the papers, and a 30-page **Index** round out the work.

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GUEST WORKER PROGRAMS AND POLICIES

by

Philip Martin and J. Edward Taylor
University of California at Davis

ABSTRACT

Guest or foreign worker programs aim to add workers to the labor force without adding permanent residents to the population. Although the United States considers itself to be a country of settler immigration, the United States has had non-immigrant or guest worker programs for most of the 20th century.

The United States has usually relied on a micro labor shortage rationale to justify guest worker programs, often for agriculture. In Europe, by contrast, the 1960s rationale for guest workers was to overcome general or industry-wide labor shortages in nonfarm sectors such as construction, mining, and manufacturing. IN Asian nations such as Japan, the current rationale for guest workers is that they are trainees acquiring skills in Japan that will accelerate development in their countries of origin.

The major beneficiaries of guest workers are the employers who request them, plus complementary industries and workers, such as packing and processing firms and workers if the presence of farm workers keeps the production of a farm commodity viable. In addition, temporary foreign workers who fill vacant jobs increase to a country's employment and GNP, and may restrain inflationary wage increases during periods of labor shortage. In some cases, the presence of foreign workers can increase the status of domestic workers as foreign workers fill the bottom rungs of a country's job ladder.

The major costs of guest worker programs are distortion and dependence. Distortion refers to the fact that economies and labor markets are flexible, so that they adjust to the availability of foreign workers. Eventually, employers, investors, and local workers begin to make decisions that assume that (unskilled) foreign workers will continue to be available. As a result, economies and labor markets in both sending and receiving areas can evolve in ways that create and reinforce international labor markets, as when farmers plant crops in a place and manner such that immigrant workers will be "needed" to harvest their crops, and villages abroad evolve to "need" earnings from a foreign labor market. In such situations, labor migration can become progressively less subject to governmental control over time.

Most guest workers return as planned by governments, employers, and migrants. But the first guest workers are typically young men, and dependence or settlement refers to the fact that some of them invariably develop ties to the host country and settle there.

The settlement process often accelerates over time, so that snapshots of migrant intentions and behavior can be misleading. In many cases, settlement patterns have an S-pattern. Initially few migrants settle, then family unification and perhaps (the threat

of) a recruitment stop prompts a sharp increase in settlement. After 2 or 3 decades, the percentage of workers who settle stabilizes at 30 to 50 percent of peak migrant worker levels, and the total foreign population can be 10 to 300 percent larger than guest worker employment.¹

No guest worker program has ever been successful, in the sense that foreign workers filled only jobs for which local workers were unavailable, and had no adverse effects on local workers, the foreigners returned, and the industry did not become dependent on foreign workers. Assessments of guest worker programs are everywhere marked by complaints of unanticipated distortion and settlement.

After guest worker programs result in distortion and dependence, critics emphasize that there were credible alternatives to foreign workers. But doing any kind of benefit/cost analysis after a guest worker program has operated for a decade or more is difficult because the benefits tend to be immediate, measurable in economic terms, and concentrated in the hands of a few employers. Costs, on the other hand, tend to be deferred, hard-to-measure (how should one measure the cost of integrating an ethnic or religious minority), and shared widely in the host community.

The nature and timing of guest worker benefits and costs tends to accentuate benefits and understate costs. For this reason, there is a tendency for foreign worker programs to become larger and to last longer than anticipated.

This experience suggests that countries considering initiating guest worker programs keep three points in mind:

- First, there are costs as well as benefits associated with guest worker programs.
- Second, recognizing the existence of costs justifies serious consideration of alternatives to foreign workers before labor-short employers request them.
- Third, if a country decides to initiate a guest worker program, economic regulatory mechanisms should be added to the usual regulatory system.

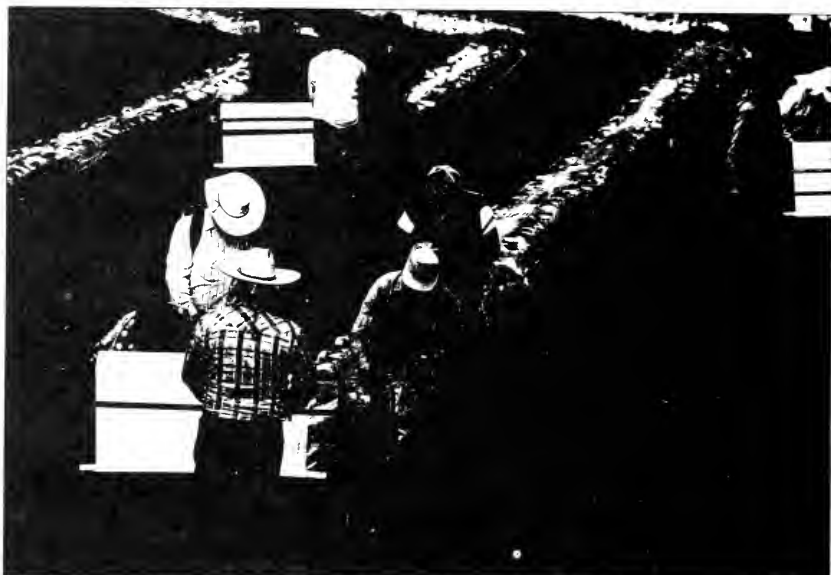
In particular, guest worker programs come closer to working as intended if there is little illegal immigration (so that illegal aliens are not easy substitutes for legal guest workers), and if there are strong labor market institutions (so that governments can credibly determine whether labor shortages exist and whether the presence of alien workers is distorting labor markets). Second, governments that have taxes or levies to cover the costs of administering the program, to minimize the distortions due to the presence and availability of foreign workers, and to generate funds to cover some of the inevitable settlement costs associated with migrant workers tend to be more satisfied than governments that rely only on rules and regulations.

¹ The number of "foreign" workers and "foreigners" depends, of course, on whether foreigners naturalize and whether their children are considered foreigners or natives. Countries such as Germany that have low naturalization rates and consider the children of foreigners to be foreigners provide data on the multiplier effects of guest workers that may be obscured in countries such as France and the United States.

Third, governments may want to use economic incentives to promote the return of guest workers, such as employer bonds or forced worker savings accounts. Several Asian countries, for example, require that 30 to 50 percent of migrant worker earnings be deposited in interest-bearing savings accounts and reclaimed by the worker only if the worker appears at a consulate in his country of origin within 30 days of the end of his work contract.

Table 1. Guest Worker Programs:Error! Bookmark not defined. Rationale and Examples

	<u>Rationale</u>	<u>Typical Origin</u>	<u>Examples</u>
1.	Labor shortages	Macro or sectoral — agriculture, mining construction, private households, nursing Micro — U.S. H-2 programs	Macro: European guest worker programs; U.S. Bracero — practically blanket certification Micro: U.S. H-2 programs that emphasize individual job certification
2.	Manage inevitable migration	Deal with illegal immigration problems	U.S. Bracero program after "Operation Wetback" in 1954; German seasonal worker program, Malaysian foreign worker program
3.	Recognize that borders can divide "natural" labor markets	Border commuter programs in Europe; Malaysia-Singapore programs	Daily border commuters. There is also weekly and seasonal commuting from e.g., Eastern Europe to Germany, and from the West Bank and Gaza to Israel.
4.	Provide training and development assistance	Labor shortages in manufacturing, households	Japanese trainee system; U.S. navy program



Jack Kelly Clark

Effects of immigration reform not as expected...

Many modern growing techniques remain relatively labor-intensive. Here, three field workers unroll plastic mulch onto a double-row of summer-planted strawberries as two more follow behind with propane-heated cutters, making openings for the strawberry plants.

California farmers still rely on new immigrants for field labor

J. Edward Taylor Dawn Thilmany

Employer sanctions under the 1986 Immigration Reform and Control Act (IRCA) were intended to encourage U.S. employers to adjust to a smaller, more legal workforce. This study focuses on changing patterns of farmworker turnover and the use of farm labor contractors to test IRCA's effectiveness. The authors' findings do not support the hypothesis that IRCA would succeed in reducing California agriculture's reliance on new immigrants to meet its labor needs.

The 1986 Immigration Reform and Control Act (IRCA) was designed to deter illegal immigration into the United States by imposing penalties including possible imprisonment upon employers who knowingly hire illegal immigrants. Agriculture was considered a "special case" in IRCA because western agricultural interests testified to their heavy reliance on illegal immigrant labor, primarily for seasonal work. As a result, special provisions were included in IRCA that gave farmers more time to adjust to legal workforce requirements, legal sanctions against hiring illegal immigrants did not take effect for most agricultural employers until December 1988.

There is evidence, however, that in an-

icipation of employer sanctions, employers made little effort to attract or retain legal workers by improving wages, benefits, or personnel practices. Instead, they continued to use farm labor contractors (FLCs), through whom they could appear to make a good-faith effort to comply with employer requirements without significantly reducing their reliance on illegal immigrant labor.

It has been argued that, traditionally, FLCs have functioned not as employment stabilizers, but rather as revolving-door employers of new, and sometimes illegal, immigrants. The price they exact for providing both employment and social services is measured in lower wages, fewer

hours, poorer working conditions, and often excessive charges for the settlement services needed by immigrant farmworkers. There is a widespread perception among workers and worker advocates that many FLCs abuse the workers they hire and undermine farm labor markets. If this image of FLCs is accurate and if IRCA does not succeed in forcing all farm employers to adjust to a more legal workforce, FLCs will continue to destabilize the farm labor market.

Intent of IRCA

A lack of data prevents any accurate measurement of the initial impact of IRCA on the flow of immigrant labor into the California farm labor market. However, if employer sanctions and immigration law enforcement efforts have succeeded in reducing the flow of new immigrant labor into agriculture, certain trends should emerge. Farm employers should be shifting their hiring practices away from the revolving-door employment of new immigrants and toward more stable employment for a smaller, "core" workforce. This regularization of employment would be encouraged by higher wages for seasonal workers and higher recruitment costs, since farm employers would no longer be able or willing to hire from a surplus of new, illegal immigrants at the farm gate.

Where highly seasonal labor demands may discourage individual farmers from offering stable employment, labor market intermediaries (FLCs) could emerge to match groups of legal workers with a series of seasonal jobs on different farms and take on the recruitment (and paperwork) of hiring seasonal workers. (IRCA requires that employers examine documents and fill out I-9 forms for all workers hired after December 1986.) In the restricted illegal-entry environment envisioned by the framers of IRCA, the FLCs' comparative advantage would be to coordinate a smaller, legal workforce to the large seasonal fluctuations in labor demand on individual farms. That is, FLCs would play an employment-stretching role something like hiring halls or labor exchanges, and thereby reduce the workers' unemployment spells between seasonal jobs.

But neither the employment patterns of farmers nor the role of FLCs is likely to change in this way if, despite the prospect of employer sanctions and increased border patrols, immigrant labor continues to be as abundant as it has been in the past — if IRCA fails to effectively deter the use of unauthorized immigrant workers. If illegal immigrant workers are available despite the implementation of employer sanctions, farmers may respond to those sanctions in one of two ways:

1. They may hire workers directly and "invest" in reducing the probability that they will be sanctioned for knowingly hiring illegal immigrants. Checking workers' documents and filling out I-9 forms are the strongest protections growers have against apprehension. There has been a proliferation of false documents among illegal-immigrant workers, but the present law does not require that employers verify the authenticity of workers' documents.
2. Farmers may hire workers through labor contractors, thereby shifting many of the costs and risks of hiring and recruitment to this labor-market intermediary. In an abundant immigrant-labor environment, FLCs' role would be as it has been in the past: recruitment of new workers from abroad for short-term work, rather than providing stable employment for a "core group" of legal farmworkers.

According to our analysis of unemployment insurance (UI) data from the California Employment Development Department (EDD), the share of all agricultural workers hired through FLCs increased 25% between January 1984 and December 1988. In fact, FLCs accounted

for nine-tenths of the increase in total seasonal farm employment in California during that period.

How FLCs work

Farm labor contractors are independent intermediaries who, for a fee, recruit and supervise approximately one-third of the workers employed in California agriculture. But they are more than employers. They often transport, house, feed, and train new arrivals; in effect, they are one-person shops taking care of newcomers. Traditionally, labor contractors have reached across a porous U.S.-Mexico border to recruit large numbers of new, mostly unauthorized immigrant workers for short-term farm jobs. According to recent studies, many farmers appear to perceive FLCs as a buffer between themselves and the immigration and labor laws that regulate farmworker employment.

Turnover patterns

We analyzed farmworker turnover patterns to test the hypothesis that farmers and FLCs began to offer more stable employment to workers during the adjustment period granted them by IRCA's agricultural provisions. Specifically, we tested the hypotheses that (1) worker turnover in farm jobs decreased as farmers took steps

TABLE 1 Summary statistics for FLC and non-FLC workers

Variables	FLC workers	Non-FLC workers
	average	
Share of workers whose principal employer is in		
Central Coast	6%	7%
North Coast	1%	3%
Sacramento Valley	4%	3%
San Joaquin Valley	74%	20%
South Coast	14%	18%
Share of workers in		
Berry production	NA *	2%
Dairy production	NA	1%
Deciduous tree fruits	NA	2%
General crop farms	NA	4%
Grapes	NA	4%
Vegetable production	NA	7%
Worker characteristics		
Quarterly earnings with current employer	\$989	\$3,735
Quarters with same employer since 1984	2 205	5 296
Consecutive quarters with same employer	1 095	4 659
Quarters since 1984		
in same region	3 563	5 991
in seasonal agricultural services (SAS) work	4 895	2 988
in farm work	0 095	0 707
in nonfarm work	1 195	4 303
without UI earnings	4 521	3 122
Total payroll of current employer	\$431,990	\$258 750
Sample size = 3,792		
*California Unemployment Insurance records do not classify FLC workers by commodity		

to retain core groups of legal workers while shifting seasonal employment to farm labor contractors, and (2) turnover rates were relatively low for farm labor contractors who, like farmers, have an incentive to retain legal workers if IRCA's employer sanctions are effective.

We tested the turnover hypotheses by estimating changes over time in the probability that individual workers changed principal employers. We also tested for differences in probabilities of turnover between FLC workers and other farmworkers. In our estimation, we control for characteristics of workers and of workers' principal employers that are likely to influence turnover.

Compiling data

Data for our study are from a matched 5-year time series on a random sample of 3,792 individual farmworkers assembled from California UI records. Unemployment insurance data provide the best available census of people employed on farms. The units of observation are individual workers (identified by social security numbers) at different points in time (annual quarters) from January 1, 1984 to December 31, 1988.

For each worker drawn in a given year, information on all farm and nonfarm jobs held by the worker over the 5-year period was placed into the worker data file. This information includes the commodity (Standard Industrial Classification for SIC code) and the region (county) in which each job was held and the worker's total earnings in each job. For each worker-job combination, the UI data include an employer identification number. Employer identification numbers were used to assemble data on the characteristics of the workers' employers from a parallel UI employer file. These worker and employer characteristics were used as controls in our estimates.

Table 1 contrasts FLC workers and other workers in our sample according to their regional distribution, wages, size of employer, and work experience from 1984 through 1988. (The commodity [crop] in which FLC workers are employed is not available from UI data.) FLC workers are concentrated in the San Joaquin Valley ("4"). Overall, FLC workers have significantly lower earnings and fewer quarters of experience with their employer than do other (non-FLC) workers.

Findings

Our econometric findings did not support the hypothesis that farmworker turnover decreased from January 1984 to December 1988, the end of agriculture's allotted period to adjust to IRCA's employer sanc-

TABLE 2. Estimated effects of explanatory variables on the probability of employer change

Variable	Estimated effect on probability of turnover*
	%
Time trend (quarters 1-20)	3.07
Share of FLC workers	12.06
Share of workers whose principal employer is in:	
Central Coast	-14.26
North Coast	-20.90
Sacramento Valley	-9.06
San Joaquin Valley	-14.06
South Coast	-18.01
Share of workers in:	
Berry production	-6.56
Dairy production	-10.72
Deciduous tree fruits	5.03
General crop farms	0.08
Grapes	6.39
Vegetable production	-8.84
Worker characteristics	
Quarterly earnings with current employer	-0.42
Quarters with same employer since 1984	-0.08
Consecutive quarters with same employer	-2.70
Quarters since 1984 in same region	-1.55
in seasonal agricultural services (SAS) work	0.48
in farm work	-0.67
in nonfarm work	0.59
without UI earnings	-0.30
Total payroll of current employer	-0.06

Source: Taylor and Thilmany, "Worker Turnover, Farm Labor Contractors, and IRCA's Impact on the Farm Labor Market," Department of Agricultural Economics, University of California, Davis, Working Paper No. 91-4, 1991.

*Evaluated at means of all other explanatory variables. For dummy (i.e., region and commodity) variables D_i , the Effect at Means is the percentage difference in expected turnover probabilities between $D_i = 1$ and $D_i = 0$. For SAMEE, CONV, SFIP, SASO, FARMQ, NFARMQ, NOWORK, and TIME, the numbers in this column are the effects of 1-year changes on expected probabilities. For EWAG and OPAY, the numbers in the column are elasticities at means.

tions. Instead, the data indicated that farmworker turnover increased over that period approximately 3% per quarter for the average farmworker in the average farm job (see table 2). These findings contradict the scenario that farm employers, including FLCs, began managing a smaller, more stable workforce during the adjustment period.

There is also evidence that FLCs are not employment stabilizers. Employment with an FLC significantly increases the probability that a worker will change employers from one quarter to the next. Controlling for all other worker and employer characteristics at their means, FLC work-

ers have a 12% higher probability of turnover than non-FLC workers.

Our control variables offer additional insight into which workers would be expected to change employers from one quarter to the next and which would not. Workers' earnings with their principal employers in the current quarter are negatively related to the probability that workers will change primary employers in the next quarter—the more they are paid, the less likely they will leave. Employment changes are also discouraged by workers' number of consecutive quarters of experience with the same employer and by their experience in the same region, although not necessarily working in the same commodity. Those working for large employers exhibit significantly lower turnover rates than those working for small employers. Quarterly changes in a grower's number of employees reflect the degree to which those jobs are seasonal, and the more seasonal the work is, the greater the rate of turnover.

The difference in the probabilities of turnover between FLC workers and other workers generally is larger than the 12% difference for the otherwise average worker reported above. This is because FLC workers are not "average" workers, and FLCs are not "average" employers. For example, FLC workers have significantly lower earnings than non-FLC workers, and low earnings encourage high turnover.

Conclusions

The findings from our turnover model do not support the hypotheses that IRCA was initially effective at curtailing the supply of new immigrant labor to agriculture or that farmers used the extra time granted to them by IRCA to adjust to a smaller, more legal workforce. Use of FLCs was increasing in the wake of IRCA, and farmworker turnover was increasing, not decreasing, as both FLCs and other seasonal agricultural service (SAS) employers appeared to be offering less-stable employment opportunities to workers over time. This analysis paints a picture of a farm labor market that was still being fed by streams of new immigrants, and in which farm labor contracting was on the rise, as employer sanctions took effect.

J. E. Taylor is Associate Professor and D. Thilmany is a Graduate Student in the Department of Agricultural Economics, UC Davis.

The authors gratefully acknowledge the financial support of the Sloan Foundation and the data support of the California Employment Development Department.

Mr. SMITH. Thank you, Professor Taylor. Professor Miller.

STATEMENT OF PROF. MARK J. MILLER, DEPARTMENT OF POLITICAL SCIENCE AND INTERNATIONAL RELATIONS, UNIVERSITY OF DELAWARE

Mr. MILLER. Hi. I'll try to be very brief, as my testimony is. My role is to comment on developments in agricultural labor in Europe. And I think there are three major trends and developments that we should look at.

The first and most important, in my eyes, has been a modest renewal in guest worker style recruitment of foreign labor in European agriculture. Now this is a somewhat surprising, and in my eyes a somewhat alarming, development because by the mid-1970's, as you all know, the guest worker programs in Western Europe have been largely curbed. There are a number of major exceptions to that, the French seasonal worker program being the most important one. But by the 1980's, I began to see evidence of the Germans and Dutch tolerating illegal labor in the agricultural sector. This mainly involved Eastern Europeans, and it's important for us to understand that foreign policy considerations seemed to have driven these policies, particularly towards Poland. By 1990, Germany had, in effect, developed a new guest worker program for agriculture. It's too early to say how this is coming out, but what's important for us to understand is that the numbers of people admitted are very modest. I don't think there's going to be a return to a large guest worker policy in Europe, and the reasons for that are pretty clear. There's too much unemployment; there's too much political opposition to immigration, and there's too bad a taste in everybody's mouth about guest worker policy from the 1960's.

The second major development, in my eyes, has been the spacial extension of significant illegal employment in agriculture. It's spread to Southern Europe and to Eastern Europe, and even in Northern Europe. Even up in Norway, the strawberries are now being picked by Polish workers. And this is tolerated because in the Norwegian case the Norwegian Government wants to enable Polish workers to send back wage remittances to help Poland through this difficult period. And the numbers, again, are quite modest. But there's been this spacial extension. It's quite alarming in some cases. Countries like Poland have very substantial illegal farm employment despite the fact that so many Poles are going to the Netherlands and Germany to find agricultural work.

The third major development, in my eyes, has been the presumption of historic patterns of agricultural labor migration that have been interrupted by the cold war. And essentially what this is is that the Polish workers who were so important to French agriculture back in the 1920's. Well, they return by 1990, and they are becoming more significant.

Thank you very much.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF PROF. MARK J. MILLER, DEPARTMENT OF POLITICAL SCIENCE AND INTERNATIONAL RELATIONS, UNIVERSITY OF DELAWARE

Agriculture has loomed large in the history of international migration to Europe. In my 1981 testimony to the U.S. Senate Subcommittee on Immigration and Refugee Policy (Temporary Workers, October 22, 1981, J-97-75) and in my 1992 testi-

mony to the Commission on Agricultural Workers (Report of the Commission on Agricultural Workers, Appendix II, Hearings, pp. 836-869), I wrote at length about that history and particularly about administration of the French and Swiss seasonal labor policies. I referred to foreign workers admitted by these policies as Western Europe's *braceros*, although the bulk of seasonal workers in Switzerland are employed in non-agricultural jobs. My reflections here will serve to update and expand upon my earlier testimony. There have been significant developments. The most important of these in my eyes has been the increase in legal admission of temporary foreign workers. Like a number of other observers, I have been surprised and somewhat alarmed by the resumption of temporary foreign worker recruitment. The other key developments pertain to mounting evidence of extensive illegal alien employment in Southern and Eastern European agriculture and the resumption of historical patterns of East-West labor migration in agriculture that had been disrupted by the Cold War.

The relevancy of reflection upon Europe's foreign agricultural workers in the context of deliberations over U.S. immigration policy has become clearer over the years. European states and societies are very different than the U.S. Yet, European experiences can be instructive. For instance, European policymakers have sought to secure extensive cooperation of migrant-sending states in prevention of illegal migration by agreeing to admit limited numbers of temporary foreign workers for harvesting and other agricultural work. The merits of the U.S. adopting a similar strategy vis-à-vis Mexico should be considered, although, I'm skeptical about the wisdom of such an approach in both settings. Now, more so than in that past, there is a realization that Western Europeans and Americans essentially are in the same boat in a global environment characterized by immense disparities between developed and developing states, burgeoning population growth in many areas and a growing propensity for international migration. These circumstances make transatlantic cooperation in management of international migration imperative. Moreover, the recent creation of the World Trade Organization is supposed to result in greater transparency in labor questions and a leveling of the playing field as it were for international competition in trade. Liberation of trade in services could also have important effects upon alien employment in agriculture if services are broadly defined to include harvesting and other agricultural tasks. Widespread utilization of foreign labor on both sides of the Atlantic and the circumstances surrounding its utilization already is an important concern in bilateral and regional relations and may well become more rather than less contentious.

THE RETURN OF THE GUESTWORKER

Foreign labor in European agriculture is no longer the national security concern it was on the eve of the First World War. (Olsson) Yet patterns of dependency upon foreign labor in agriculture which had developed long ago often persist. The end of the Cold War has witnessed resumptions of historical patterns that had been interrupted by the Iron Curtain. Large sectors of French agriculture, for instance, had become dependent upon foreign labor by the interwar period. (Cross, 71-81) Poland provided much of the interwar foreign agricultural workforce. Since the mid-1980s, Poles have again become a significant labor force for French farmers.

Developments in Germany are emblematic of a broader pattern. The guestworker era in the Federal Republic of Germany began in 1955 with a decision to admit some 10,000 Italian farmworkers. Not much significance was attached to the decision which was seen as dampening wage inflation for agricultural work and as a step towards regional integration. Soon thereafter, guestworker employment in non-agricultural sectors would dwarf foreign labor employment in German agriculture. By 1974, the German government curbed further recruitment of foreign labor from outside the European Community. Obituaries were pronounced for the guestworker era and the consensus of scholarly and governmental opinion held that the concept has been flawed. By 1983, the German government was offering financial incentives to foreign workers and their dependents to repatriate. Even then, though, certain employer associations, including representatives of agricultural interests, were calling for a resumption of foreign labor recruitment.

Evidence mounted throughout the 1980s of growing employment of Poles and other Eastern Europeans in German agriculture. *Ostpolitik* and the Helsinki Accords resulted in hundreds of thousands of German visas for Warsaw Bloc-area citizens. By 1989, nearly one million visas were issued in that year alone. German policy prevented forcible repatriation of individuals from Communist-ruled Eastern European countries. By 1980, asylum claims were skyrocketing and asylum issues were significant in the German elections of 1981. In this context, German authorities appeared to tolerate growing technically illegal employment of Poles essentially

for foreign policy reasons. Tacit toleration of Polish employment in agriculture, and in sectors like construction and hotels and restaurants had a safety valve effect upon Poland which was grappling with severe economic problems. Wage remittances from Germany helped Poles cope with their economic problems, but officials in charge of enforcement of laws prohibiting illegal employment of aliens worried that progress made in employer compliance with labor laws was being undermined.

Circa 1990, an acrimonious debate developed over the pros and cons of renewal of temporary foreign worker admissions policies for agriculture and several other sectors. Advocates of resumption carried the day. Since then, several hundred thousand temporary foreign workers from Central and Eastern Europe have been admitted to Germany yearly. The German government signed seven bilateral agreements which resulted in 128,688 admissions in 1991, 212,442 in 1992 and 181,037 in 1993 for employment in agricultural and non-agricultural jobs. (Werner, 26) Since May 1993, employers must pay a 100 DM. placement fee. Most recruitments is by name and there is some evidence of employers violating the three month residency limit stipulation. In 1994, Germany required unemployed workers to take seasonal jobs in agriculture in order to continue receiving benefits. And, if they did, they would receive an additional daily allowance of 25 DM. Legally-admitted aliens in Germany, as elsewhere in Europe, are disproportionately vulnerable to unemployment and thus were particularly affected by the 1994 requirement. (Martin, 220).

Additionally, bilateral treaty between Germany and Poland authorizes border-area residents to work up to 50 kilometers on the other side of the frontier. Under agreements between Poland and many European Union member states, Poles now enjoy visa-free entry for a period of several months. Poles must still seek authorization in order to legally take up employment. Similar arrangements have been made for citizens of several other formerly Communist states. The net result for Western European agriculture has been an upsurge in legal and illegal employment of Central and Eastern European citizens.

Events in the Netherlands in the 1980s broadly paralleled the German situation. (Groenendijk and Hampsink, 55-56) When Poles began arriving in the early 1980s, their employment in agriculture was tolerated. By 1983, Dutch aliens police were instructed to permit foreigners with tourist visas to take up seasonal work for the duration of the validity of the visa. Later, agreements between farmers and Dutch authorities permitted seasonal work in agriculture if no labor could be found in Spain and Portugal as well as the rest of the European Community. In 1990, the Dutch Social Affairs Ministry changed policy and attempted to oblige long-term unemployed to work in agriculture with mixed results. Farmers preferred foreign labor, although large numbers of the unemployed in the Netherlands are Moroccans and Turks.

Most recently, British and Irish subcontractors have been competing for Dutch agricultural jobs and there has been much litigation. The numbers of seasonal permits granted by the government have been modest, ranging from a high of 2,245 in 1989 to 888 in 1993.

In Dutch and German agriculture, then, there has been a limited resumption of guestworker-like policy although the guestworker term is avoided. German advocates of temporary foreign worker admission policies prefer the term seasonal workers. Swiss seasonal foreign workers in Switzerland are compelled to return home in less than a year. German advocates of Swiss-type seasonal worker policy did not appear to realize that many seasonal workers became resident aliens of Switzerland.

An additional irony in these developments has been an upsurge in largely illegal foreign worker employment in Poland and in several other of the more developed ex-Warsaw Pact states. By the 1990s, tens of thousands of alien workers had taken up employment in Polish agriculture. In part, this may have involved replacement migration—a phenomenon witnessed, for instance in Jordan where indigenous workers migrate abroad drawn by higher wages and are replaced by foreign workers themselves attracted by higher wages than found at home, say in Egypt. Poland, like several nearby post-Communist states, has become a land of immigration virtually overnight and it is poorly prepared to regulate alien labor in flows. Polish authorities regard the presence of tens of thousands of foreign agricultural workers from Russia and the Ukraine as a matter bearing on national security.

Illegal employment of aliens in agriculture is commonplace throughout Europe wherever there is labor-intensive agriculture. Alien labor is much less significant in highly mechanized agriculture say in the French wheat-growing industry. Illegal employment of aliens in agriculture may be more extensive today than it was several decades ago. Developments in Southern Europe have played a major role in this.

Prior to 1970, countries like Spain, Italy, Portugal and Greece were countries of emigration. They sent millions of workers northward including in the Spanish case,

a large contingent of agricultural workers. In the 1970s, the first signs of a profound transformation appeared. One of the unintended effects of the foreign worker recruitment curbs adopted from 1972 to 1975 by most Northern European countries was a redirection of foreign labor flows to Southern Europe. Concurrently, Southern European lands were undergoing profound social, political and demographic changes. Birth rates plummeted. Increasingly, aliens could find work and, as in French immigration history, agricultural employment was often the first step, the way station to better paying and less onerous employment in other sectors like manufacturing or hotel and restaurant services.

Disarray is perhaps the best word to describe governmental responses in Southern Europe to growing illegal migration. Spain, Portugal and Italy have responded with recurrent legalization policies as well as by imposing employer sanctions and, in Spain and Italy, authorization of limited seasonal foreign labor recruitment for agriculture. The Italian government has announced a seasonal foreign worker policy for agriculture several times in recent years but the proposal has been mired in controversy. Employers have opposed a provision which would deny alien seasonal workers access to unemployment benefits and family allowances. (Groenendijk and Hampsink, 48-49) They hold that the government plan would violate the principle of equal treatment protected by the Italian constitution and ILO convention 143 which Italy has ratified. Spain has been granting about 20,000 foreign worker permits a year to Algerians and Moroccans. Interested workers can apply at Spain's consulates in Algeria and Morocco and thousands have applied.

IMPLICATIONS FOR THE UNITED STATES

Americans debated the pros and cons of temporary foreign worker policy for agriculture in the 1980s. Europeans have engaged in similar debates. European decisions to curb guestworker recruitment in the mid-1970s suggested that guestworker policies were flawed. In this respect, the modest revival of guestworker policies in all but name in Europe is somewhat surprising. But the scale of admissions has been modest. There will be no return to the guestworker era because of the severity of unemployment and widespread opposition to immigration.

European governments have made concessions to employer groups, including farmers, but the major force driving the resurrection of temporary foreign worker employment appears to be foreign policy concerns. Modest foreign worker programs have been instituted to secure bilateral cooperation in management of international migration. It is difficult to assess the outcomes of the new wave of modest temporary foreign worker policies at this point. The European Union increasingly will be a factor and European leaders favor initiatives to address root causes of unwanted migration, especially in Eastern Europe and North Africa. Long term policies will likely include a mix of policy instruments ranging from trade liberalization to humanitarian assistance to very limited admissions of foreign labor, particularly for seasonal work in agriculture.

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Mr. SMITH. Thank you, Professor Miller.

Mr. Gallegly has to leave momentarily, so I'm going to yield my time to him, and I'll take my time after Mr. Berman. Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman. And I want to thank all of you for being here this morning.

Mr. Estrada, as a member of the Jordan Commission, that is, you served on the Jordan Commission, that's correct?

Mr. ESTRADA. Yes, sir.

Mr. GALLEGLY. And, as you know, I asked the question of Mr. Fraser earlier about the percentage of those that are working in

our fields here illegally. You made a comment relative to the bracero program. Wouldn't you say that the status quo that we have in this country today, and I'm not saying that the guest worker is the right idea, but at least the status quo is kind of a de facto illegal Bracero Program?

Mr. ESTRADA. I don't know that I would characterize it quite that way. I would say that the laws of the United States are being broken with regard to illegal immigration, and I would also suggest, Congressman, that there has been an unwillingness historically on the part of the employers of illegal alien labor not only in agriculture, but in other sectors as well, to make an adjustment. As someone who followed the 1986 legislation very careful, the so-called Simpson-Rodino bill, I can tell you that it was my understanding as far as the motivations that the authors of that legislation had was that there would be an adjustment, and various labor sectors have refused to make that adjustment.

Mr. GALLEGLY. Because we have just a very short amount of time, I apologize for interrupting you.

Mr. ESTRADA. That's all right, sir.

Mr. GALLEGLY. But, as a member of the Commission—the Commission, as I said, appeared before our committee and went on record, their numbers of those that were illegally in our fields. We didn't talk about the garment and some of the other areas where we have a high percentage of immigrant labor. But in agriculture, they said that their numbers were somewhere between 50 and 60 percent of those working in the fields were here illegally. Assuming that your Commission's numbers are correct, one, how would you advocate that we remove those people, if they are, in fact, illegally in this country, as I would believe you would be an advocate of enforcing the law? And, two, if we have 750,000 migrant farm workers, as Mr. Fraser indicated, that would mean that somewhere between 300,000 and 400,000 people working in our fields are here illegally. Do you believe that we have the domestic force or how would you propose that we fill those jobs? If you could answer those two questions.

Mr. ESTRADA. OK, sir. In the first place, as far as how to remove, I do believe that the implementation of a worker verification system represents a credible alternative to the current system.

Mr. GALLEGLY. The electronic system that we have advocated in the bill?

Mr. ESTRADA. I think that the Commission on Immigration Reform has proposed a test pilot program and that's what I'm for.

Now, as far as the size of the illegal alien work force in America today, my answer to you would be that I believe on the basis of the unemployment statistics that I have seen in rural labor that much of that—many of those positions could be filled by legal labor. Also, I would suggest that even if agribusiness were able to come before us and say that 100 percent of its workers were illegal, though they had not knowingly hired them, that that would still not absolve Congress from investigating why this is so and whether there is a 100 percent labor displacement.

Mr. GALLEGLY. That's maybe a separate issue, and I don't challenge that, but I do think that it is responsible for folks who have done a lot of work in this area—do you really believe that tomor-

row that if we went into the fields and removed 350,000 people that are illegally working there, by your Commission's numbers, that we would by the next day have a workforce able to pick perishable crops?

Mr. ESTRADA. No, sir.

Mr. GALLEGLY. Thank you.

Mr. ESTRADA. But the fact of the matter is that it's not going to happen tomorrow. It's going to happen sometime in the future and the responsible thing to do would be for agribusiness to begin preparing and adjusting for it.

Mr. GALLEGLY. But you do advocate the responsible thing to do, if, in fact, there are 350,000 people in the fields illegally, that they should be removed and returned to their homeland?

Mr. ESTRADA. I believe that the laws of the United States should be rigorously enforced in this area.

Mr. GALLEGLY. Thank you very much, Mr. Estrada.

Mr. ESTRADA. Thank you, Congressman.

Mr. SMITH. Thank you, Mr. Gallegly. Mr. Berman.

Mr. BERMAN. Just to follow up on Mr. Gallegly, he sort of said it, but I think it should be emphasized. I took what you said in response to Mr. Gallegly's question is, "Boy, is that hypothetical; there is no way in the world that 350,000 farmworkers are going to be out the fields tomorrow."

Mr. ESTRADA. That's absolutely correct. I mean, as a practical matter, what we face is change within a given time period. And here, again, it seems to me that the operative question is, will agribusiness use that time in order to adjust to whatever realities it fears are going to take place in the event of a meaningful and effective immigration reform scenario?

Mr. BERMAN. You know, Mr. Chairman, I thought this panel was really tremendous and the points they all covered I thought were really important to remember. It's almost ironic in a way that there is a certain similarity—I've dealt with the growers, many who are advocating this now, for a number of years, negotiated issues, and I like them, and they are good people, and I understand that they want to keep it the way it is. It's just so natural and human. There are elements even in organized labor sometimes on how to deal with the workforce and the loss of jobs. It's almost the flip side sometimes of how to deal with change and what you need to do, and there are elements in both communities sometimes that don't want to come to grips with what's happening and what you've got to do, and who want to go back, whether it's to their feather bed—ding in one case or to maintaining a subsidized foreign guest worker to protect the way it was. But the other ironic thing is people coming from very different positions sometimes advocate things that are pretty similar.

I thank you.

Mr. SMITH. Thank you, Mr. Berman.

Mr. Estrada, first of all, let me thank you for your good work on the Commission of Immigration and Reform. You all have provided a great service to us in Congress and to the country as well.

My first question is, in what way do you feel guest worker programs promote illegal immigration, as you testified a minute ago?

Mr. ESTRADA. Well, first of all, let me point out that wasn't a guess on my part; it's based on statistics that have been compiled over time.

Mr. SMITH. I guess I'm asking you why the Commission felt that.

Mr. ESTRADA. Well, what generally happens in the migratory phenomenon is that you have an initial group of people that come into the country and they basically are pioneers, if you will. They dig channels of immigration. They then become conduits of information for other people in their home countries. And if they do not abide by the provisions of their entry and remain illegally and go into other labor sectors to work, they then are able to tell their cousins or their friends how to do it. Anyone who has ever studied the illegal immigration phenomenon or the immigration phenomenon knows that in the real world this is how it works. So, as a result, the longer such a program is in place, and the more people who tend not to abide by the provisions of the program, and there are many, and those numbers grow over time, the greater the channels of illegal immigration will be.

Mr. SMITH. Thank you, Mr. Estrada.

Professor Heppel, you mentioned in your testimony that there was a labor surplus. Why do you feel that way, and to what extent, if there is one, does it exist, as far as numbers?

Dr. HEPPEL. When the studies for the Commission on Agricultural Workers began to come in, what we did was fund a number of case studies in different agricultural labor markets, because it's very hard to generalize about perishable crop agriculture around the country, and so we had a number of case studies. Consistently they would show, whether it was from responses to questionnaires of growers, "Have you had difficulty getting labor, workers?", "Have you had trouble finding jobs?"—consistently, the patterns would come back that there were more workers than there were available jobs.

Recently, a couple of years ago, the institute did a study in the West Virginia apple harvest where H-2A workers were essentially removed from that very specific labor market. Growers feared a labor shortage there. The next season, after the removal of H-2A workers, there was absolutely no labor shortage. Workers were coming from other labor market areas; they were coming directly from Mexico. There has simply been no documented instance of a wide-spread labor shortage.

The Commission on Agricultural Workers also found that workers were not leaving agriculture; the assumption, or the fear of the agricultural industry, was that as soon as workers received legal status, they would move into other industries where it had been more difficult to find jobs. That did not prove to be the case, which is why we never had to institute the RAW program.

So, I think there's a number of reasons why there's no surplus, but the evidence is clear that throughout the country there's no labor shortages right now.

Mr. SMITH. Thank you, Professor Heppel.

Professor Taylor, I'd like to address this question to you, but also to other members of the panel, including Mr. Estrada. And let me set this up for you and then ask you to comment.

I hope that Congress will succeed in passing legislation that is very ambitious, but I hope that that legislation would succeed in reducing illegal immigration by 50 percent over the next 5 years. Right now we have between 300,000 and 400,000 individuals coming into the country illegally. Let's suppose that we do succeed in reducing that number in half. So, now we're talking about 150,000 to 200,000. If we focus just on California, for example, a State that receives about half of those individuals, we're talking about a diminution in California of 75,000 to 100,000 illegal aliens over the course of 5 years. Considering that the universe that we're talking about is 1.6 million fieldworkers in the United States, and say that we reduce that by the 150,000 over 5 years, we're talking about reducing the labor by about 10 percent over a 5-year period of time. It seems to me that that is not going to necessarily create a trauma among those who rely upon guest workers, but I would be interested in your opinion and then the opinion of the other members of the panel.

Mr. TAYLOR. In my view, reducing the farm work force, or reducing the numbers of illegal immigrants by 300,000 to 400,000, the magnitudes that you've suggested over a 5-year period may be overly optimistic. If—and the reason——

Mr. SMITH. As I say, reducing it by half is an ambitious goal. I'm not sure that we'll succeed, but let's just——

Mr. TAYLOR. The reason that it's so ambitious is that, first of all, you have very tight networks of contacts across borders which have already been mentioned. The overly successful SAW program, which by our estimates in California legalized three times as many people as actually worked 90 days between May 1984 and May 1985, legal or illegal, that SAW program actually reinforced these migrant networks by legalizing the status of anchors of those networks in the United States. And then, through time, structural links emerge between the villages in Mexico that send migrants to the United States and the economies to which the migrants come in the United States, the employers who hire them, to the point where you might think of transnational economies forming; that is, economies that cross over national borders. Villages in Mexico are structurally dependent now on migration, just as employers in the United States are structurally dependent on having those immigrants here.

I would suggest that even if efforts currently being planned are very effective, the impact will be more gradual at best. And so this suggests that actually farmers have more time to adjust to a smaller agricultural work force than many people fear. Economic studies of labor demand and agriculture indicate that the longer-run demand response is actually much greater than the shorter-run demand response.

Mr. SMITH. Professor Taylor, I'm going to need to get Mr. Estrada's answer very quickly and then move on. I know that other members of the panel would like to respond, but I'm afraid we'll have to wait.

Mr. ESTRADA. Mr. Chairman, I do not believe that such numbers, as ambitious as they are, would create a trauma for growers. I do believe that it would benefit unemployed legal workers, and that it would benefit U.S. taxpayers at large, taxpayers who pay grow-

ing social service costs because of the unemployment and because of the utilization of certain social services by even the illegal alien work force. What we are witnessing today on the part of the growers in this situation, in my opinion, is the privatization of profit and the commonization of cost.

Mr. SMITH. Thank you, Mr. Estrada. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

Let me again refer to the number that's been used, 300,000 to 350,000 undocumented immigrants working in our agricultural fields, whether or not it's accurate. Actually, do any of you think it's more or less than that number that's been given? Any ideas?

Dr. HEPPEL. It really is so much guess work. I mean——

Mr. BECERRA. It's a substantial number, though?

Dr. HEPPEL. Yes.

Mr. BECERRA. That substantial number——

Mr. ESTRADA. Mr. Becerra.

Mr. BECERRA. Yes, Mr. Estrada?

Mr. ESTRADA. If I could interrupt—there was testimony given in public by a grower last year in the Santa Barbara area and, let's see, to be specific, a representative of the Western Grower/Shipper Vegetable Association publicly stated last year that illegal aliens comprised 50 percent of the work force of the Santa Maria Valley in Santa Barbara County.

Mr. BECERRA. Well, if we were to take those numbers, it might even be more than 300,000 or 350,000 throughout the Nation. Let's assume for the sake of this discussion 300,000 to 350,000. We have laws that require us to verify whether someone is authorized to work, correct? It seems to me that if we accept the number 300,000 to 350,000 to be somewhat accurate, that either 300,000 or 350,000 immigrants have fake documents that are persuading the growers that they are entitled or authorized to work in this country, or that it's either—I hate to use the words—affirmative action being employed by employers, growers, or quiet acceptance by employers of individuals who are not authorized to work, would any of you disagree with that statement?

Dr. HEPPEL. I'd say that both are going on.

Mr. BECERRA. OK, so in other words, growers, to some extent, are feeding the fire that allows undocumented or unauthorized workers to remain in this country? Yes? No?

Mr. TAYLOR. Yes.

Mr. ESTRADA. Mr. Becerra, I have heard that there are actually labor recruiters in Mexico urging this kind of thing to take place. So it's not just a matter of—and I have no personal knowledge of how many growers are promoting this kind of thing, but it is occurring, and it is not simply a matter of growers passively waiting for illegal alien laborers to present themselves.

Mr. BECERRA. I take that, then, to be an answer of yes, Mr. Estrada. I'd like something for the record other than just a nod or a smile. Yes, Mr. Miller?

Mr. MILLER. Yes, if I could attempt to——

Mr. BECERRA. Is that a yes to answer my question or——

Mr. MILLER. To address your question and Mr. Smith's question, and I don't want to be offensive here, but I think that both the United States and Western Europe would largely be better off if

labor-intensive agriculture went to lesser developed countries. Indeed, that is in our long-term national security interests to see that done.

Mr. BECERRA. I think that what you're saying is it's better to have high paying jobs in this country than low paying jobs. But to my question, would you agree that employers are aiding individuals who aren't authorized to work in this country to work in the fields of this country?

Mr. MILLER. I think so, yes.

Mr. BECERRA. You think so. Mr. Taylor.

Mr. TAYLOR. There is such a momentum behind unauthorized immigration currently that I believe that farm employers are more passive than that. Workers appear at the farmgate with or without authorization, increasingly without, and there have actually been reported instances of workers joining harvest crews in the hopes of being paid. This is the kind of environment that we find ourselves in.

Mr. BECERRA. By the way, I don't mean to impugn something ignoble or dastardly in what growers do. These are laws created by man. It wasn't the law of God that said that you cannot employ someone. Obviously, I think that God would have preferred that they be paid at least minimum wage. But I can't blame someone who wants to have a business, although I think that people who have a business need to make sure that everyone gets to survive and not just the owner of the business. I'm not impugning complete responsibility or guilt here. What I am saying is that you cannot have 300,000 to 350,000 unauthorized workers in the fields of our country without the people who employ these individuals partaking in some way in letting these folks work.

And, Mr. Chairman, let me just ask one last question. I know that my time has expired.

Professor Taylor, using that economic model that you did earlier, you mentioned that a guest worker program would be needed if three conditions were fulfilled: if you had excess demand for that work, you had an unresponsive supply, in other words, there were not enough workers out there to meet that demand, and there were limits on the employer's ability to address the unresponsive nature of that supply of workers. In other words, even if they decided to raise the wages tenfold, they still could not get enough people to work. It seems to me that you—

Mr. TAYLOR. Let me just make a small correction in that. I said at least three preconditions. Many people would add that that economic activity is desirable despite those three conditions. That is keeping it on short rather than—

Mr. BECERRA. And focussing on those three preconditions, we do not have an excess demand at this stage, I think you said.

Mr. TAYLOR. No, we have quite the opposite right now.

Mr. BECERRA. OK, and as I understand it, we don't have an unresponsive supply. We do have people who are willing to work for less than minimum wage, so they are not being adamant that they must be paid \$20, \$30 an hour.

Mr. TAYLOR. The farm work force is already an immigrant workforce. So what we are really talking about is whether there are unemployed people out there who would go into the fields,

given the right economic inducements, which obviously are not there right now. I think when we're talking about young people living in Los Angeles, trying to get them to go out in the fields in Fresno and pick grapes, you're talking about a very inelastic labor supply, and in that sense, growers are right.

Mr. BECERRA. And so the inelastic labor supply is really founded on these conditions. Someone in Los Angeles may not want to travel 200 miles to the Central Valley to pick grapes in 110 degree weather, but that doesn't mean that they won't; it's just that you have to meet their demand, which might be a decent—you know, I may want you to pay me \$15 an hour and have a toilet outside of the field, so I can use it, if you're going to ask me to work for you, but it's inelastic to an extent, but there are probably ways to address the inelasticity of that labor supply.

Mr. TAYLOR. At some wage, I might be willing to pick grapes today rather than appearing before you.

Mr. BECERRA. Even Congressman Berman said he'd be willing to work in a restaurant if you paid him enough.

Mr. BERMAN. To pick grapes I would have to be paid a higher wage. [Laughter.]

Mr. TAYLOR. But the key here is that we're talking about labor demand, not labor needs. Labor needs has no meaning whatsoever to an economist.

Mr. BECERRA. OK. So, it seems to me that what you were saying, and I tend to agree with you, is that if the right conditions were there, those millions of people that are unemployed in this country could be placed in the field; it's just that there are conditions that some of them may require, not all of them. I think that some of them would be willing, even if they had to travel quite a distance, if you just told them it's a stable job. But even if it's not, if we said to them you're going to be paid a few more dollars than we're accustomed to paying, there's a good chance that a lot of those jobs would be taken up?

Mr. TAYLOR. There's a good chance that you would be able to increase the supply somewhat. The next limit or constraint you would bump up against is whether the agricultural activity in question is still economically viable at the prices that consumers would have to pay.

Mr. BECERRA. That's correct.

Mr. TAYLOR. And it turns out that very little of the cost of labor on farms is that final price that we pay in the grocery store.

Mr. BECERRA. And that's very important because any grower has to look at the bottom line, and we don't want to drive a grower out of business, but what it may mean, ultimately—the consequence might be I pay 5 cents, 10 cents more for a head of lettuce or for a pound of fruit than I might otherwise as a consumer to make up for that additional cost to labor.

Mr. TAYLOR. And it also might mean mechanization research once again on the UC Davis campus, for example.

Mr. BECERRA. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Becerra. Mr. Bono.

Mr. BONO. I find this a fascinating discussion. First of all, all the data that's been presented has the appearance of being axiomatic.

Professor Heppel, where do you get your data? Do you work with farmworkers and farmowners and gather your data?

Dr. HEPPEL. I have over the years. I'm not currently involved in a study. When I was Research Director of the Commission on Agricultural Workers, yes, we had interviewers in the field talking to growers, talking to workers.

Mr. BONO. Did you go or did someone else go?

Dr. HEPPEL. Prior to that, I was the research director of a national study for the Center for Immigration Studies, and at that point, yes, I went myself. I also, in 1979, worked as a farmworker for 1 year picking various crops.

Mr. BONO. When was that?

Dr. HEPPEL. That was in 1979. But in terms of giving me the ease of going onto labor camps, I feel fairly comfortable doing so as a result of that experience.

Mr. BONO. If I were to say to you that in the Coachella Valley, for instance, that every farmowner would say exactly the opposite of what you represented, and you as well, Mr. Taylor, in saying that there is this excessive labor pool, how would you respond to that, that they are wrong, don't know what they are talking about? What would you say?

Mr. TAYLOR. If I can go back to economics, I believe that those farmers are thinking in terms of labor needs at existing wages and working conditions.

Mr. BONO. I understand your revolutionary theme on how to retool. I mean, if I heard you right, if I had this problem at my restaurant, I would come up with a new system that would work out my problem. But my question is, if these farmers, aside from your theory, said you were wrong about the labor pool, then would you say that they are wrong, or would you say that they may be right?

Mr. TAYLOR. I would say that real wages for their workers would have to increase, working conditions would have to improve, and then the question would become whether they, like your restaurant, could still stay in business.

Mr. BONO. Well, when you say "real wages," are you saying that we must discard minimum wage? It's an unrealistic number that we are working on?

Mr. TAYLOR. No. Actually, we're talking about wages increasing. So the minimum wage would not actually be a constraint. In the current environment where we have a surplus of labor, pushing wages down to the extent minimum wage laws are effective, they are keeping wages from falling perhaps lower than they are.

Mr. BONO. Yes.

Dr. HEPPEL. If I may, Mr. Bono—if I was told by agricultural employers—I'm an anthropologist, not an economist, and so I spend more time in the field and I go about collecting data differently. And if I was told, then I would report that growers perceived a labor shortage. I would then report what workers perceived in that same environment. I would not ask growers the question, "Do you think you have enough workers?" I would ask growers the question, "Have you changed your recruitment practices," "Have you lost any production," "Have you not been able to harvest your crops because there weren't enough workers," a number of such questions that would lead me to a conclusion. I think that I have talked to enough

agricultural employers that if I say, "Would you like to have access to more workers," they would probably answer yes. I would not report that as a labor shortage.

Mr. BONO. Well, I would just like to present to you the notion that if I, and I have, go around to every employer, they would say this is an immense problem; labor pool problem was an immense problem.

Mr. BERMAN. Would you yield on that question?

Mr. BONO. Sure.

Mr. BERMAN. I appreciate that. It's hard for me to believe—I mean, I would be interested in almost direct confirmation of what you are saying. I understand that the grower in the Coachella Valley, and in this day, with this surplus labor market, with these kind of unemployment figures, saying, "I'm scared to death of what's going to happen if we really get hold of the border. I'm quite nervous about that." I have talked to a lot of growers. I have not been hearing them say there are presently labor shortages which make it very difficult for them to get—I mean, we've heard the figures, we've heard the statistics, and we're going to hear more about that.

Mr. BONO. Well, we've heard the figures from the professors.

Mr. BERMAN. Yes, I discount it because of that. No, I——

[Laughter.]

Mr. BERMAN. We've heard the figures from them and from the people who've gathered the statistics as well, the Department of Labor, and people charged with this responsibility and who know the unemployment rates. I've also talked to a lot of growers, though. Maybe something's happening in the Coachella Valley that I don't know about, but, by and large, the California growers I have talked to are not talking about labor shortages today. They are talking about something happening in the future that scares them and they want to be ready to try and deal with that.

Mr. BONO. Thank you. My time is almost up. I think there are two issues here. One, there's an underlying tone that every employer is corrupt. It just keeps emerging here every time we discuss it. You pointed it out; clearly, you wanted that message at least noted, and it was. I think that's a different issue.

Mr. BERMAN. I did not mean that growers are corrupt. What I just meant to imply is that you cannot have the large number of unauthorized workers without there being some act of complicity on the part of those involved——

Mr. BONO. You're right, and that is corruption. Clearly, there is corruption there. Now in my case—you're only talking about farmers—I own a restaurant. In my case, I did own a restaurant. I can assure my intention was never to be corrupt. Now Mr. Berman will not accept a reality that, if costs go up anymore than they do, I shut down.

Mr. BERMAN. I accept that.

Mr. BONO. You do accept that?

Mr. BERMAN. Sure.

Mr. BONO. Because I thought I heard that was not an excuse or——

Mr. BERMAN. It's not an excuse to create a subsidized foreign worker program at low wages to maintain the life of the industry.

I definitely think—boy, we know restaurants are going under every day for one reason or another. It's the American right to succeed and the right to fail. It's how you deal with things, it's how you make improvements in what you're doing, it's how you're handling it, how you recruit. All I'm saying is we don't—you are not coming forward to say we need a foreign restaurant guest worker program, and I'll bet you that a lot of restaurants would have a lot of difficulty if they have to increase their wage rates for people. So, I understand their problem, but you aren't saying, and you never suggested, that we would do a guest worker program to solve this problem for restaurants.

Mr. BONO. I just disagree that there is this abundance of labor out there willing to fill this void now. The message I keep hearing is "pay more money," and it's a good message. But if you can't, you can't, and that's a reality that we have to accept unless you pass that off to the consumer. Then, the consumer won't come there any more because the prices are too high. I just don't think it's as simple as it's being discussed here.

And it's fascinating to me that people become experts in areas and never work in the business. Everything that I know and feel that I am an expert on, I have been in that business for many years, and every year I learn more that I have been in that business. So for us to be here with our suits and our ties and these offices and discuss these things and have these axioms, I think no one should worry about this country because it's in good hands. We have experts to guide us.

Mr. BERMAN. The next panel will take care of that.

Mr. BONO. What's that?

Mr. SMITH. Thank you, Mr. Bono. Mr. Estrada has patiently had his hand up, so we'll hear from Mr. Estrada before we then take a short recess.

Mr. ESTRADA. I just wanted to get away from the theoretical aspect of the discussion of labor availability and point out that growers and restaurant owners might be asked specific questions regarding the issue of unemployment compensation and Social Security taxes. If you look into this issue, I think you will find that illegal aliens are ineligible for unemployment compensation. Right off the bat, that represents a 4-percent premium on their labor, and it represents an identifiable cost advantage for the employer precisely because an illegal alien under law is not supposed to access that pool. The same thing can be said about Social Security, which will represent something on the order of 14 percent on wages when you factor in the contributions of the employer.

Mr. SMITH. Thank you, Mr. Estrada. Apparently, several members had relied upon earlier indications by me that we would take a luncheon break, so I think we will do so. We have a 1 o'clock vote today, and we will reconvene immediately after that one o'clock vote at 1:15 p.m. or thereabouts.

Let me encourage all those who are here now, including members of the media, to return, if they will, after lunch. We have two very important panels coming up, and what they have to say is very important. We will recess until about 1:15 p.m.

[Whereupon, at 12:23 p.m., the subcommittee recessed, to reconvene at 1:25 p.m.]

Mr. SMITH. The subcommittee will reconvene.

I thank you all for being here. I didn't think there was anyone here. I looked up, and everybody was already in their chairs.

So we'll go and start for a couple of reasons: one, because you all have much to contribute, and two, because we're expecting a couple of votes at two o'clock.

The individuals of the panel are Bob Vice, president of the California Farm Bureau, who was reelected yesterday with 95 percent of the vote; John Young, president of National Council of Agricultural Employers, president of the New England Apple Council; Delores Huerta, first vice president, United Farm Workers; Robert Williams, from the Florida Rural Legal Services, and W.J. Grimes, representing the Vidalia Onion Business Council and the Georgia Agribusiness Council as well.

Welcome to you all, and we'll start with Mr. Vice.

STATEMENT OF BOB L. VICE, PRESIDENT, CALIFORNIA FARM BUREAU FEDERATION

Mr. VICE. Thank you, Mr. Chairman and members of the subcommittee.

My name is Bob Vice, and I am the president, again, of the California Farm Bureau Federation. I am testifying today on behalf of the National Council of Agricultural Employers, the NCAE, and the American Farm Bureau, on whose boards of directors I serve.

The NCAE and the farm bureau represent a vast majority of the agricultural employers in the United States and millions of farm families whose labor supply is affected by immigration policy. The NCAE and the farm bureau have examined H.R. 2202, aimed at controlling illegal immigration, and have concluded that, if enacted, it will have a significant effect on the availability of agriculture labor in the United States. Our conclusion is consistent with that reached by the Commission of Agricultural Workers three years ago when it stated that, "More effective enforcement of employer sanction would affect the supply of farm labor and would necessitate access to the legal farmworkers."

Mr. Chairman, we endorse your initiative to bring integrity and to simplify the hiring process by reducing the number of documents acceptable for employment eligibility verification. Currently, the employers face a real catch-22. IRCA's employer sanctions send a strong message: scrutinize employment documents carefully or face severe penalties. IRCA's antidiscrimination provisions sends an equally strong, but contradictory message: scrutinize employment records too carefully and face severe penalties. The road to a proper compliance is an anxiety-laden ride for the small family business.

While NCAE and the farm bureau support simplified employment verification, eligibility verification, we recognize that a mechanism such as that proposed in H.R. 2202 will likely result in future labor shortages for agriculture. As noted by the Commission on Agricultural Workers and other studies of the post IRCA labor force, employer sanctions have not been effective because of the ease at which unauthorized workers can obtain fraudulent documents.

Let me be clear, though. Farmers are not ignoring the law. However, it is easy for unauthorized workers to obtain fraudulent docu-

ments that on their face appear to be genuine and which employers must under the current law accept. We assume that the system that you have proposed in H.R. 2202 will work. Given the estimate of the large percentage of workers in agriculture with fraudulent documents, which will be excluded by the implementation of an effective verification system, we are concerned about the future adequacy of the agricultural labor supply.

H.R. 2202 also seeks to control illegal aliens through increased border control and interior enforcement. Independent of H.R. 2202, the administration's fiscal year budget for 1996 requests unprecedented funding for border and interior enforcement. The administration has indicated it will target industries with large alien populations, such as agriculture. These initiatives, in combination with broadened penalties and remedies for offenses relating to the hiring of undocumented aliens, and the phase-in of an automated employment verification tied to counterfeit proof documents, will significantly reduce the future agricultural labor supply.

As you review IRCA to make it work to achieve its intended purposes, we strongly urge the subcommittee to review the adequacy of programs intended to meet agriculture's needs for alien workers in the event of domestic worker unavailability.

The replenished agriculture worker program, RAW program, enacted as part of IRCA sunsetted in 1993, many users of the H-2A program who had hoped that amendments in IRCA would make it more workable have concluded that it is now more unworkable than ever. As a result, a workable program must be adopted which permits growers and ranchers to meet their labor needs in situations where domestic workers are unavailable.

Mr. BERMAN. May I just interrupt? I'm sorry, what is more unworkable? I missed the first part of your sentence.

Mr. VICE. The H-2A program.

We believe that a temporary worker program for agriculture can be designed using components of established immigration programs that will address the subcommittee's desire to limit the admission of alien workers and insure that those admitted return to their countries of origin in a timely manner, and at the same time protect the jobs of domestic workers while providing a safety valve program for agriculture and insure the workers are admitted in a timely manner when agriculture labor needs are critical. Such a program should have user fee and incentives for workers to return home.

Given the cost, regulatory compliance obligations, and potential legal challenges to the use of alien worker program, I can assure that agricultural employers are only going to use this program as a last resort when they can't get domestic sources of labor. A workable temporary worker program is an integral part of the retooling of IRCA based on the past 10 years' experience. It is totally consistent with the control of illegal immigration. Reform of existing temporary alien programs for agriculture should not be predicated upon an existing labor shortage. The responsible approach is to anticipate the likely effects of H.R. 2202 and provide a means of dealing with them now.

Mr. Chairman and subcommittee members, I appreciate your time in considering the importance of immigration reform to American agriculture.

[The prepared statement of Mr. Vice follows:]

PREPARED STATEMENT OF BOB L. VICE, PRESIDENT, CALIFORNIA FARM BUREAU FEDERATION

Mr. Chairman, my name is Bob Vice. I am President of the California Farm Bureau Federation (CAFB). I am submitting my comments today on behalf of the National Council of Agricultural Employers and the American Farm Bureau Federation on whose Boards of Directors I serve.

The National Council of Agricultural Employers (NCAE) is a Washington, D.C. based national association representing growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers in fifty states who hire about 75 percent of the national agricultural workforce. Its members include farm cooperatives, growers, packers, processors and agricultural associations. NCAE was actively involved in the legislative process that resulted in the enactment of the Immigration Reform and Control Act of 1986 (IRCA). NCAE's representation of agricultural employers gives it the background and experience to provide meaningful comments and insight into issues concerning immigration policy and how it affects the employment practices of its members' businesses and the availability of an adequate agricultural labor supply.

NCAE is filing this statement jointly with the American Farm Bureau Federation (AFBF). The American Farm Bureau Federation is the nation's largest general farm organization. Farm Bureaus in all 50 states and Puerto Rico represent some 4.4 million member families nationwide. Farm Bureau's farm and ranch members are engaged in the production of virtually every agricultural commodity grown commercially in the United States. AFBF's members are similarly affected by the pending immigration reform legislation.

NCAE and AFBF have examined the bill reported out of the House Committee on the Judiciary (H.R. 2202) and concluded that if enacted, it will have a significant effect on the availability of the future agricultural labor supply in the U.S. As we monitor the current immigration reform legislation in Congress, we are mindful of the potential impact it will have upon agricultural production in this country. For example, the most labor intensive agriculture in this country, fruit, vegetable and horticultural production, generates sales valued at \$23 billion annually.¹ As a result, we believe that any legal immigration proposal considered by the Subcommittee must ensure that an adequate labor supply is available to meet the future labor needs of this vital and expanding area of U.S. agricultural production, as well as of those commodities that are less labor intensive but have difficulty attracting sufficient domestic workers. We believe that this can be achieved in a manner consistent with illegal and legal immigration reform through alteration of the existing "H" nonimmigrant temporary alien programs.

1. THE ANTICIPATED EFFECTS OF IMMIGRATION REFORM ON AGRICULTURE

A. Establishment of a Simplified Verification System. NCAE and AFBF support efforts of Congress to simplify and bring integrity to the employment process. We encourage initiatives to simplify the hiring process by reducing the number of documents acceptable for employment eligibility verification. Hopefully, this will lessen confusion and help establish a more efficient hiring process that is so important to the extensive seasonal field hiring that is characteristic of labor intensive agriculture. It also is likely to reduce the discrimination that is an unintended by-product of IRCA. To the extent that reform results in a reduction in the use of fraudulent documents as a result of a simplified verification system, it promotes the integrity of our borders, efficiency in the business of farming and removes the uncertainties that can increase inadvertent noncompliance with the law.

Both NCAE and AFBF were actively involved during the debate and development of the Immigration Reform and Control Act of 1986 (IRCA) and supported its enactment and implementation. Because of the extensive seasonal employment in agriculture, farmers are often involved in hiring numerous persons during peak seasonal times of the year. This results in constant exposure to the compliance de-

¹ 1992 Census of Agriculture, Bureau of the Census, U.S. Department of Commerce, Vol. 1, part 51, U.S. Summary (Oct. 1994)

mands of IRCA.² During the past ten years our industry has engaged in extensive training of agricultural employers, often in conjunction with INS and the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), regarding compliance with the employer sanctions and discrimination provisions of IRCA.

Notwithstanding the industry's educational efforts, surveys of agricultural employers indicate that employment eligibility verification (the Form I-9 process) is still confusing and time-consuming. One of the major complaints about the Form I-9 process is that the number of acceptable documents for work authorization purposes is too large and that the acceptability of many documents is unclear.

This becomes especially difficult for agricultural employers during peak hiring periods when large numbers of workers are hired in the field. Completion of the Form I-9 for large numbers of field workers can be an arduous process, especially where there are language difficulties. Moreover, employers knowledgeable about the document abuse provisions of IRCA (8 U.S.C. § 1324b(a)(6)) are hesitant to refuse to accept uncommon documents about which they are uncertain as to their acceptability for work authorization purposes. Under IRCA's document abuse provisions, employers are charged with a per se violation of the Act if they request more or different documents than are required or refuse to accept tendered documents that appear on their face to be genuine. The Subcommittee is to be commended for taking a step in the right direction in section 114A of S. 269 by imposing an intent requirement as part of the document abuse provisions.

Employers face a "Catch-22". The primary problem with the current law is that IRCA's employer sanctions and (Section 274A) and document fraud provisions (Section 274C) send a strong, simple message: scrutinize employment documents carefully or face significant fines. IRCA's anti-discrimination provisions (Section 274B) send an equally strong and conflicting message: scrutinize employment documents too carefully or ask for them without using the precise choice of words required by the document abuse provisions and face significant fines. These provisions send a contradictory message to employers, making proper compliance an anxiety-laden process with few clear guidelines.

We welcome efforts by Congress to reduce the confusion created by this contradiction. A reduction in the number of documents acceptable for employment eligibility verification purposes is a step in the right direction. It is anticipated that this would decrease the amount of time required to process new hires and hopefully reduce the likelihood that conscientious employers would inadvertently violate IRCA's discrimination provisions while trying to ascertain the legitimacy of uncommon or questionable documents.

As we understand the provisions of H.R. 2202, they seek to establish pilot telephonic verification programs in states with large alien populations. The intent of the telephonic verification system is to establish a process that will reliably determine whether a person offering an employment document is eligible to work. It also seeks to reduce the number of acceptable employment verification documents. We support those objectives of the telephonic verification system of H.R. 2202.

We also believe that such a verification system must be easily used by small and large employers alike and provide them with safeguards if they cannot secure the required verifications in a timely manner or if they rely upon the data provided by the system that turns out to be inaccurate. A positive result of this approach hopefully would be simplification of the hiring process and reduction in discrimination, benefitting both employers and workers. For the agricultural industry, it also has the potential to significantly reduce our workforce.

As noted in the Report of the Commission on Agricultural Workers (CAW Report) created by IRCA, employer sanctions have been ineffective in preventing unauthorized aliens from crossing the southern border in large numbers. As stated in the CAW Report:

"While the majority (of unauthorized workers) find employment in industries other than agriculture, a significant number join the farm labor force. With fraudulent documents easily available, employer sanctions have been largely ineffective."³

²The 1987 Census of Agriculture reported 818,347 farms hiring labor, and a gross payroll of \$10.9 billion. In addition, the census reported that 272,000 farms used contract labor and paid a total of \$1.8 billion in contract labor expenses. The U.S. Department of Labor summarized that as of May, 1993 there were 13,711 licensed farm labor contractors that reported employment of 488,223 workers. While there is no equivalent data on employment by farmers, the 1982 Census of Agriculture, which reported roughly the same number of farms hiring labor as were reported in 1987, reported 4.856 million "hires" during the year. This statistic reflects the large amount of seasonal employment and multiple job holding which occurs in agriculture.

³Commission on Agricultural Workers, Report of the Commission on Agricultural Workers, Executive Summary, p. 2 (November 1992).

The CAW Report cites government studies in the late 1980's and early 1990's indicating that the unauthorized harvest workforce ranged between 12 and 35 percent, dependent upon the crop and area.⁴ Reports from INS and individual agricultural employer audits indicate that the percentage of unauthorized workers can range as high as 50 to 70 percent. The CAW Report on the failure of employer sanctions and the large number of unauthorized workers is consistent with other testimony presented to this Subcommittee. Undoubtedly, it is a primary impetus for those provisions in H.R. 2202 that seek a credible employment verification system.

Reports of large numbers of unauthorized workers in agriculture do not mean that farmers are ignoring the law. NCAE and AFBF would like to make it clear that the vast majority of agricultural employers comply with their legal obligations under IRCA. They do not seek to hire unauthorized workers and they comply with the employment eligibility verification requirements of the law. As noted above, agricultural organizations throughout the U.S. have engaged in extensive education and compliance training of agricultural employers regarding IRCA's requirements. What the CAW and other reports evidence, however, is that it is easy for unauthorized workers to obtain fraudulent documents that on their face appear genuine and which employers must accept under current legal standards. Employers refuse to accept employment documents at the risk of violating IRCA's discrimination provisions.

We support the Subcommittee's efforts to end the use of fraudulent documents and employment of unauthorized workers in the U.S. Given the estimates of the large percentage of workers in agriculture with fraudulent documents which will be excluded by the implementation of an effective verification system, we are concerned about the impact on the agricultural labor supply. While we are not now claiming that there are major and widespread labor shortages in agriculture, such shortages are likely if the telephonic verification system included in H.R. 2202 is effectively implemented in the future.

B. Increased Border and Interior Enforcement of Employer Sanctions. In addition to establishment of an effective verification system, H.R. 2202 also seeks to control the entry of illegal aliens seeking employment in the U.S. through increased border control and interior enforcement. The bill authorizes sizeable increases of border patrol agents. Increases in the number of Department of Labor and I.N.S. personnel are sought for the purpose of increasing investigations of violations of the employer sanctions provisions.

We are pleased that the Subcommittee agreed to remove the provision from H.R. 2202 that would have allowed the government to seize and forfeit the farms and ranches of persons if they are found to have employed one alien not authorized to work in the U.S. We are also gratified that H.R. 2202 does not contain a provision similar to that in S. 269, its Senate counterpart that would repeal the requirement put into the law in IRCA that would require INS officials to obtain a search warrant before seeking to apprehend aliens on outdoor agricultural property.

We believe that the antidiscrimination provisions of the bill were significantly improved by the amendment offered by Mr. Goodlatte and accepted by the Subcommittee that would have required an intent requirement to prove certain documentation practices discriminatory. Unfortunately, as we understand it, the full Committee on the Judiciary adopted an amendment offered by Mr. Frank that repealed the Goodlatte amendment and creates a standard that is more confusing than that under current law and potentially conflicts with state labor laws. S. 269 contains a provision with an intent standard similar to that offered by Mr. Goodlatte and we hope that such a provision is again made a part of H.R. 2202.

Effect of Border Control Efforts. What is the effect of current efforts at border interdiction and expansion of such efforts through authorization of and appropriation of funds for more border patrol and land border inspectors? Expanded border control efforts near San Diego and in Texas have had an impact on the agricultural labor supply. As such efforts expand, we expect an even greater effect. Reports of labor contractors and others working closely with migrant workers from the southern indicate that it is increasingly difficult for migrant farmworkers to cross the Mexico-U.S. border.

While we applaud the success of INS' efforts in this area, it means that a portion of the agricultural labor supply believed to be work authorized in the U.S. apparently is not, otherwise it would not encounter difficulty in entering the U.S. Properly authorized workers would simply enter through ports of entry with proper documents. Given the extensive appropriations sought by the President to expand border

⁴Commission on Agricultural Workers, Report of the Commission on Agricultural Workers, p. 53 (November 1992).

control efforts, we expect that such efforts will increasingly become successful and impact the agricultural labor supply.

Effect of Increased Interior and Employer Sanctions Enforcement. It is clear from the President's FY 1996 budget request relating to illegal immigration control, the recommendations of the Commission on Immigration Reform (CIR) headed by Barbara Jordan, and the provisions of H.R. 2202 reflecting some of the CIR recommendations, that there is a strong commitment on a bipartisan basis to help control illegal immigration. A major part of this commitment is sought to be achieved through expanded enforcement activities directed at those employing unauthorized workers. We anticipate that such efforts will be focused on industries such as agriculture which have historically employed large numbers of alien workers. If the expanded enforcement resources and telephonic verification features of H.R. 2202 are enacted, NCAE and AFBF expect that they will have a significant impact upon the agricultural workforce.

Historically, enforcement activities against employers, which invariably result in apprehension and/or deportation of farmworkers, tend to drive other unauthorized workers in the area out of the job market because of fear of apprehension. Given the estimates of the percentages of workers in agriculture that possess employment authorization documents that growers must accept under the law but which are in fact fraudulent, coupled with expanded enforcement efforts by INS and DOL officials authorized by H.R. 2202, it is anticipated that agricultural labor supply will be disrupted.

C. Conclusion. If H.R. 2202 realizes its objectives, it will achieve the control of illegal immigration that IRCA has been unable to accomplish. Through expanded border interdiction efforts, broadened enforcement of the laws related to the hiring of undocumented aliens, and phase-in of a telephonic employment verification system, H.R. 2202 will affect the availability of an adequate future labor supply for agriculture. The Commission on Agricultural Workers realized this likelihood when it concluded that "more effective enforcement of employer sanctions would affect the supply of farm labor and could necessitate access to additional legal foreign workers."⁵

While NCAE and AFBF support the purposes, if not all of the means to achieving these immigration control initiatives, responsible public policy dictates that they be adopted in conjunction with amendments that will balance their impact on the agricultural labor supply by providing an effective temporary and seasonal alien agricultural worker program.

2. COMPREHENSIVE IMMIGRATION REFORM REQUIRES AMENDMENT OF THE "H" TEMPORARY AND SEASONAL ALIEN WORKER PROGRAM FOR AGRICULTURE

A. Current Programs Do Not Adequately Meet Agricultural Labor Shortages. As discussed above, agriculture anticipates that H.R. 2202 and its Senate counterpart, S. 269, will affect its future labor supply especially in combination with border and interior enforcement initiatives. NCAE and AFBF strongly believe that comprehensive immigration reform as proposed by H.R. 2202, which includes significant alterations of IRCA after nearly ten years experience with that law, is incomplete if it fails to address the lack of an adequate program to provide temporary and seasonal alien agricultural workers when there are shortages of domestic workers. We strongly urge the Subcommittee to review the adequacy of the existing program and believe that, once it has done so, it will conclude that the "H" temporary and seasonal alien worker program needs amendment to make it workable for its intended purpose.

When IRCA was enacted in 1986 it contained a seasonal agricultural worker (SAW) program with a component replenishment agricultural worker (RAW) program. SAW workers are not required to work in agriculture and many of them have sought work in other industries. While the SAW program legalized persons with a history in perishable agriculture, the RAW program was intended to provide a replenishment mechanism in the event of agricultural worker shortages. The RAW program sunsetted in 1993 without ever being invoked by the agricultural industry.

The only remaining means of meeting agricultural worker shortages is the H-2A program. Users of that program also sought to amend it when IRCA was enacted in order to eliminate those features that had historically been impediments to its successful usage. The 1986 amendments to the H-2A program has not made the program any more workable for many of its users. I understand you will receive testimony from users of the program that detail its deficiencies and inadequacies.

⁵ Commission on Agricultural Workers, Report of the Commission on Agricultural Workers, Executive Summary, p. 4 (November 1992).

As we face immigration reform in this Congress, this Subcommittee must address the fact that the RAW program has sunsetted and the H-2A program does not work for many who have attempted to use it, despite a major effort to make it workable through amendments to IRCA. As you undergo your review of IRCA and other immigration laws and amend them to achieve a workable illegal and legal immigration policy, we believe that you must amend the temporary and seasonal alien agricultural worker provisions to provide a safety valve in the event anticipated domestic labor shortages occur as a result of the enactment of H.R. 2202 or a similar measure.

Such an amendment is totally consistent with your efforts during the current reform effort. Moreover, it responds to the recommendation of the CAW Report that Congress should review the provisions of the H-2A program, "in view of the criticism of and litigation surrounding the current" program.⁶

B. The Components of a Temporary and Seasonal Alien Agricultural Worker Program. A substantial portion of labor intensive agricultural production involves perishable commodities. In states such as California, over 250 varieties of labor intensive commodities are produced which require an adequate supply of labor to harvest them in a timely manner. The lack of an adequate number of workers during peak harvest time can result in the loss of crops which will rot or be unsuitable for marketing. The same is true for different types of agricultural commodities throughout the U.S. Other crops that are less perishable nonetheless require labor in a timely manner.

The existing H-2A program has failed to be a reliable source of temporary and seasonal alien agricultural workers for many who have tried to use it. It is characterized by extensive complex regulations that hamstring employers who try to use it and by costly litigation challenging its use when admissions of alien workers are sought. The regulatory burdens leave agricultural employers waiting with uncertainty and anxiety with regard to whether they will be certified by DOL to obtain workers in a timely manner. This is especially important with regard to the production of perishable commodities. For those employers who would like to use the program because of labor shortages, the regulatory burdens and litigation costs are a major disincentive to program use.

As a result, a workable program must be adopted that allows growers a reliable mechanism to meet labor needs in situations where domestic workers are unavailable. Given the cost, regulatory compliance obligations, and potential legal challenges to the use of any alien worker program, I can assure you that growers are only going to use such a program in what they anticipate to be emergency situations where domestic sources of labor are simply unavailable.

Among the components of a revised program that we urge the Subcommittee to consider and include as part of its immigration reform bill are the following:

Substitution of a labor condition application (LCA) for the cumbersome and litigation-prone labor certification.

This component is central to any reform of the existing temporary worker program because it would eliminate the "bottlenecks" of the current program and would allow for the timely admission of workers. The H-1B provisions of the Immigration and Nationality Act (INA) enacted as part of IMMACT 90 provide a useful model. Prior to the enactment of the H-1B program, employers experienced the same obstacles to timely admission of skilled workers because of the regulatory impediments inherent in the labor certification process. The H-1B program adopted the LCA approach as a more streamlined and efficient alternative. We believe that an LCA approach is especially well-suited to agricultural employment, given the often perishable nature of the crops and the need for timely admission of workers, most likely in emergency circumstances.

Establishment of labor conditions that the employer will commit to, including agreement to pay the prevailing wage for the occupation and not to undercut the working conditions of domestic workers; use of aliens only in temporary or seasonal agriculture; prohibition of the use of such workers during a strike or lockout; filing of a job order with the state employment service for job opportunities in occupations for which the LCA is filed and a preference for the hiring of U.S. workers.

Enforcement of program requirements through complaints against employers by aggrieved parties for failing to comply with the LCA or other program requirements. Employers violating the LCA could be debarred from the program in the future, as well as face backpay liability and administrative fines.

After filing of the LCA, petitions for admission of workers should be filed with the INS. Counterfeit-proof visas should be issued to workers admitted under the

⁶ Commission on Agricultural Workers, Report of the Commission on Agricultural Workers, p. 134 (November 1992).

program. This would help ensure that they can only work in agriculture and that they leave the U.S. upon expiration of their visas.

Workers would be admitted for a period of no longer than 10 months for an individual employer.

Aliens should have the same labor law protections afforded to domestic workers.

The program should establish a means by which a percentage of an alien's wages would be withheld and returned to him/her upon return to their country of origin in a timely manner in compliance with the terms of their visa. This would provide a "carrot" for timely return of temporary workers.

Employers would have to pay an amount comparable to what they pay for FICA and FUTA taxes for domestic workers into a trust account to be used to fund the administration costs of the program.

We believe that the above elements of a temporary worker program for agriculture will address the Subcommittee's desire to limit the admission of alien workers, ensure that those admitted return to their countries of origin in a timely manner, and protect the jobs of domestic workers, while providing a safety valve program for agriculture that will ensure that aliens workers are admitted in a timely manner when labor needs are critical.

3. GENERALIZED CRITICISMS OF TEMPORARY AND SEASONAL AGRICULTURAL WORKER PROGRAMS ARE INAPPLICABLE TO THE ABOVE-PROPOSED PROGRAM AMENDMENTS

Having set forth the need for amendments to the temporary worker provisions of the INA to meet the anticipated needs of agriculture, once H.R. 2202 or similar immigration reform legislation is enacted, it is important to address the generalized criticisms leveled at any alien agricultural worker programs. We believe that the components of a workable program outlined above stand on their merits. Outlined below are the most common criticisms of any temporary alien worker program for agriculture and responses explaining their inapplicability to the amendment we propose.

A. The Absence of a Current Widespread Labor Shortage Does Not Justify Delaying Program Development Until Such a Shortage Exists. Critics of a temporary agricultural worker program argue that there is not a current shortage of agricultural workers and that a program to address such a need, if it occurs, should await evidence of a problem. This criticism ignores the fact that there is not now a shortage of agricultural workers only because immigration control has not been effective in preventing employment of unauthorized workers. Earlier I pointed out that both empirical studies and evidence from INS audits and raids indicates a high proportion of unauthorized workers in the agricultural work force. H.R. 2202 and S. 269 are before the Congress primarily to rectify this problem. We believe, and I am sure the members of this Subcommittee believe, that these measures will be effective in curtailing document fraud and the employment of unauthorized workers. This will remove a significant number of workers from the agricultural work force.

It would be irresponsible for Congress to wait for a shortage to develop before addressing this problem. Irreparable harm would be done to agricultural producers and competitive position of U.S. agriculture. Even if the "need" manifest itself in a dramatic fashion, with crops rotting in the fields, many producers could not recover from such a financial disaster by the time Congress enacted a temporary worker admission program. But the "need" is likely to manifest itself in far less dramatic fashion, that is less likely to get the attention of Congress. It is likely to manifest itself in the slow erosion of the competitive position of U.S. producers, who gradually reduce or abandon production of labor intensive commodities, until one day we awake and wonder why the U.S. is no longer competitive in world markets for labor intensive agricultural products, and where all the jobs went that this production used to support.

Congress correctly anticipated that the immigration control measures included in the Immigration Reform and Control Act of 1986 could produce seasonal agricultural labor shortages, and included the Seasonal Agricultural Worker (SAW) and Replenishment Agricultural Worker (RAW) programs in the legislation, as well as attempting to streamline the H-2A program. The SAW and RAW programs have now terminated, and the intended streamlining of the H-2A program has been a dismal failure. In reforming immigration control once again, to correct the inadequacies of the 1986 legislation, Congress should not overlook the reform of this important aspect of the program.

B. Temporary and Seasonal Workers Will Not Ignore Their Visa Limitations and Remain in the U.S. Permanently. Critics of a temporary agricultural worker program hold out the specter that such a program will create a "loophole" in immigration reform. They contend that once aliens gain entrance to the United States, they

will not leave and will insinuate themselves into the population. The European experience with guestworker programs, where the guestworkers put down roots and were loath to leave, is often cited as an example of this problem.

The best evidence to refute this criticism is past experience. U.S. agricultural migrants are totally unlike the European guestworkers, who were admitted, often with their families, to take essentially permanent jobs for "temporary" periods of several years or more. By the time it was time for them to leave, they had lost touch with their home country and often had put down family roots in their adopted country.

Those who migrate seasonally to do agricultural work in the United States, including those who migrate illegally, generally remain in the United States only for the agricultural season. At the end of the season they return to their home countries even now, when there is little incentive for them to do so. They generally do not bring their families with them, and maintain strong family ties to their home communities. Many of them are small peasant "farmers" in Mexico who take advantage of the complementarity of the U.S. and Mexican growing seasons. We are told that one of the ironies of the increased effectiveness of current border interdiction efforts by the Border Patrol is that illegal migrants who habitually return home at the end of each season are now fearful of leaving the country for fear they will not be able to get back in.

Although INS has sometimes produced statistical data suggesting otherwise, grower experience with the H-2A program is that the AWOL rate among aliens is very low.⁷ Seasonal migrant aliens value the right to enter and reenter the United States legally, and are loath to jeopardize that right. INS apprehension statistics during the Public Law 78 "Bracero" program are also instructive in this regard. INS apprehensions of illegal entrants reached a level of more than one million shortly after the start of the "Bracero" program in 1951. By 1956, when the program had reached near peak employment, apprehensions had fallen to about 100 thousand, and remained at about that level until the program was terminated in 1964. After 1964 apprehensions began a steady rise, reaching a quarter million by 1968 and a half million by 1972 and again exceeding one million by 1978.⁸

Finally, we must realize that currently there is an incentive for an alien to remain in this country. Genuine-appearing fraudulent documents are readily available. With these documents an alien can readily obtain employment. But when employment authorization documents are subject to verification, the option of remaining in the United States and working after a period of legal admission has expired will no longer exist. There will be even more incentive for aliens to protect their ability to migrate and work legally through a temporary worker program.

C. The Industry Program Described Above is Clearly Distinct from the "Bracero" Program. The Mexican Bracero program was one in a series of Congressional and administrative actions designed to respond to the problem of an inadequate supply of seasonal agricultural workers.⁹ When the Bracero program was enacted there were few statutory protections even for U.S. farmworkers. Farmworkers were not covered by the Fair Labor Standards Act until 1966 and by Unemployment Insurance until 1976. The Migrant and Seasonal Agricultural Worker Protection Act, the most comprehensive Federal statute covering agricultural workers, was enacted in 1982. Numerous other Federal, state and local labor laws have been enacted, or their coverage expanded to include agricultural workers in recent years.

The Bracero program was intended to provide a needed supply of legal foreign workers while protecting foreign workers from exploitation and protecting employment opportunities and wages of U.S. farmworkers. Some feel the program did not adequately achieve these goals. The principal criticisms of the program were the "contract labor" concept under which it operated, inadequate statutory guidelines and enforcement, and insufficient funds for its administration.

No one is proposing a return to the relatively unregulated Bracero program. The temporary alien worker admission program advocated by agricultural employers

⁷ I understand that INS officials have cited statistics allegedly showing the absence of departure records for many H-2A aliens. Yet when INS has attempted to cite growers for liquidated damages for workers who INS's records show failed to depart the country, as provided for in INS regulations, growers have produced evidence that the workers had in fact departed the U.S. and often had already been readmitted from their home countries for subsequent contracts. Our conclusion from this experience is that the absence of departure records for H-2A workers is due not to the fact that the workers fail to depart, but that INS's departure records are deficient. H-2A growers' experience in trying to get departures of workers recorded for the purpose of admitting replacements also attests to the difficulty of recording a legal departure on the Mexican border.

⁸ 1993 INS Statistical Yearbook, p. 156.

⁹ Legislation authorizing the program was enacted as Title V of the Agricultural Act of 1949, and was signed into law as P.L. 78 on July 12, 1951.

bears no resemblance to the Bracero program, and attempts to characterize it as such are clearly erroneous and irresponsible. As I have described earlier, the temporary worker program advocated by the agricultural employer community includes specific protections for both U.S. and alien workers, and makes them subject to all applicable federal, state and local labor laws. Finally, the program includes a user fee to provide funds for administration of the program.

D. Agricultural Employment is Not Low Wage Employment; Increasing Wage Rates Will Not Attract Sufficient Domestic Workers to Replace Lost Aliens, But Will Reduce U.S. Competitiveness and Market Share. Some critics of a temporary agricultural worker program contend that growers are merely seeking a source of low wage workers, and that raising wages would eliminate any "shortage" of domestic labor. This criticism is erroneous, and lies at the heart of why a temporary agricultural worker program is *good public policy* that benefits U.S. workers.

Agricultural work is not low wage work. You might be surprised to know that the average earnings of nonsupervisory agricultural field workers in the United States in 1991 were \$6.02 per hour, well above the minimum wage.¹⁰ For workers paid piece rates, average earnings were \$7.02 per hour. In California, crop workers averaged \$6.51 per hour in 1994 and averaged 41.5 hours of work per week when they were working.¹¹ These hourly earnings exceed those for many, if not most, entry level occupations in our state.

The difficulty in obtaining sufficient domestic workers is not due to low wages, but to a combination of other factors inherent in seasonal agricultural work. First is the fact that domestic workers quite naturally prefer the security of full-time agricultural or nonagricultural employment, or of longer term seasonal agricultural employment in jobs such as packaging and processing, rather than the shorter term seasonal job tenure usually associated with field work. Therefore the available domestic work force tends to fill the year round and longer term seasonal jobs, leaving the shorter term seasonal jobs unfilled. Secondly, domestic workers prefer the working conditions involved in packing and processing jobs, which are generally performed indoors and do not involve the degree of strenuous physical labor associated with field work. Finally, many seasonal agricultural jobs are located in areas where it is necessary for workers to migrate into the area and live temporarily to do the work. Fewer and fewer U.S. workers are willing to become migratory farmworkers, and given the U.S. social support system, are not compelled to do so. Foreign workers, on the other hand, are willing to migrate (they must do so to get here at all!), and fill in the shorter term seasonal and field jobs left after the indigenous work force has filled the more desirable positions.

It can be argued that our "shortage" is, nevertheless, economic. At some wage, U.S. workers would be willing to take seasonal field jobs, notwithstanding the factors noted above. That may be true. I have no idea what that wage rate would be, and I can tell you the question is academic, because before wages reached that level, U.S. production would long since have become uneconomic and moved elsewhere. I am not going to pretend to be an economist, and there is an economist on this panel already, but I do want to tell you from a practicing farmer's standpoint that the wages I and other farmers can afford to pay are set by our competitors, who are increasingly overseas producers, and the decisions we as U.S. farmers make are whether and how much we can profitably produce at the prices we can get. That is what affects whether we can afford to hire labor as well as whether we can afford to purchase all the other inputs required to produce our crops.

E. The Existence of Unemployed Workers, Future Welfare Reform, and Legalization of Spouses and Children of U.S. Citizens and Permanent Resident Aliens Will Not Provide the Solution to Agricultural Work Force Needs. Unemployment data, including unemployment data in agricultural producing areas, are sometimes cited as evidence that domestic workers are available. Others have suggested that the spouses and children of recently legalized aliens who are now becoming eligible for admission to the United States will provide a source of agricultural labor. Finally, some have suggested that welfare reform proposals that could terminate the benefits of welfare recipients after specific periods of time will force these individuals into the agricultural work force.

With respect to unemployed workers, there are plenty of actual and potential farmworkers who are unemployed between jobs, and before and after the agricultural season. I have acknowledged that as one of the characteristics of seasonal agricultural work that makes it unattractive to U.S. workers. I can tell you from personal experience that workers who claim to be unemployed *during* the agricultural

¹⁰"Farm Labor," National Agricultural Statistics Service, U.S.D.A. Sp Sy 8 (11-94).

¹¹"California Agricultural Employment and Earnings Bulletin," Economic Development Division, State of California. July, 1995.

season in the area where they live are either victims of highly unusual weather such as we have had during a couple of recent seasons in California, or they don't really want to work. For the past several years we have had an extremely tight labor market during periods of high seasonal demand, even with the availability of aliens who have access to fraudulent documents. Claims of in-season "surpluses" of agricultural labor are just plain spurious.

With respect to dependents of legalized aliens and persons whose welfare eligibility is terminated, these are highly speculative sources of labor at best. How many dependents of legalized aliens will even be *potential* agricultural workers is open to serious question, since most of them will be older parents or young children. Furthermore, the likelihood that these individuals will join the migrant farmworker stream, rather than settling down with their families, seems low. It also seems unlikely that terminated welfare recipients, even those who are physically capable of doing field work, will be willing to leave the urban centers and become migrant farmworkers. And I have to raise the question, given the billions of federal dollars we have spent in this country over the past several decades trying to settle people out of the migrant stream, whether this is the policy we really want to pursue in this country.

But the most important point to make with respect to all these potential sources of labor is that employers have absolutely no incentive to use a bureaucratic program that sets costly standards if there are sufficient workers available without doing so. Critics claim, for example, that employers of H-2A aliens are simply after cheap labor. If that is so, why are there only 17,000 H-2A workers in a U.S. agricultural work force of more than 2 million? The employers I know who aren't in the H-2A program say they're not in it because it's too bureaucratic and expensive. No employer will needlessly commit to the kind of paperwork requirements, regulations and scrutiny entailed even in a reasonably workable temporary worker program such as the one we have proposed if there is labor available without doing so. If this program is not needed, I can guarantee you it will not be used, just as use of the H-2A program is uncommon and the RAW program was not used. But we are convinced that a supplementary source of alien labor will be needed, and that it is a Congressional duty and good public policy to assure that the mechanism is in place to address this need if, or when, it occurs.

4. CONCLUSION

Mr. Chairman and members of the Subcommittee, I appreciate your time in considering the importance of the immigration reform issue to U.S. agriculture. The organizations I represent commend you for your efforts to address the difficult but important issue of immigration reform. We feel that our industry can be a constructive partner in helping you achieve your objectives in a manner that furthers your reform goals, while maintaining a vital and competitive agricultural economy that is the most productive in the world and which will continue to generate domestic jobs in and outside of agriculture.

Mr. SMITH. Thank you, Mr. Vice. Mr. Young.

STATEMENT OF JOHN YOUNG, PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is John Young, and I'm a third generation apple farmer from New England, and I've been raising apples for the last 33 years. I am also executive director of the New England Apple Council and am currently president of the National Council of Agricultural Employers. Both organizations represent their members on matters of labor and immigration and have been actively involved in the immigration policy debate in Washington during the past decade.

The New England Apple Council includes growers in all six New England States. And many of our growers, including me, have used the H-2A program since the early 1960's.

Mr. Chairman, during the last round of comprehensive immigration reform, we worked together with this subcommittee to try to reform the H-2A program. The New England Apple Council and

other traditional users of the program were strong believers in streamlining the program. I must report to you that the streamlining effort in which we invested so much time and effort in 1986 has failed miserably. I have outlined the examples of the failure of the program in my written testimony which I ask that you include in the record here. The failure is not confined to New England.

Mr. SMITH. Mr. Young, let me just interrupt you to say, without objection, that any witness who has testimony to be entered into the record will be accommodated.

Mr. YOUNG. Thank you.

The failure is not confined to New England. It is also manifested in the Southeast, Southwest, Midwest, Mountain States, and the West. Let me cite the experience of just one of our NCA member organizations that illustrates the problems with the program.

The North Carolina Growers Association filed labor certification requests for approximately 3,100 job opportunities for the 1994 season, in addition to about 5,000 U.S. workers these growers recruited and employed. The association was referred 687 U.S. workers over the course of the season, many of whom were the basis of initial denials of labor certification. Only 292 of these workers ever reported for work, and only 47 completed the season. These U.S. workers filled approximately 1.5 percent of the available job opportunities. In order to meet the program requirements imposed by the Labor Department, the association was required to engage in extensive and expensive on-location recruitment in Florida. This cost the association about \$6,000 and the various government agencies involved about \$50,000. It produced 20 referrals, only 4 of whom reported for our work, and all abandoned the jobs within 30 days.

Perhaps the failure is best summarized in the letter from the agricultural commissioner of the State of Massachusetts which is attached to my written testimony. Commissioner Healy states, and I quote, "The program at present is extremely complex and needlessly cumbersome and sadly is administered with an appalling disregard for practicality, common sense, and simple fairness."

I have attached similar indictments of the program from other public officials in Connecticut and Maine.

What is wrong with the H-2A program? This program cannot be made to work when the agency which is the gatekeeper is implacably opposed to it. The Department of Labor administration of the H-2A program, which has always been antagonistic to employer interest, has degenerated in the past few years to a pitched battle. Only employers with virtually unlimited resources can participate. Equally important, growers outside the program with a potential need to use it observe the frustrating, costly, and contentious battles we are forced to engage in to comply with the letter and spirit of this Nation's immigration laws and conclude that the program is unworkable.

The H-2A program as currently structured is unworkable in meeting the need for temporary and seasonal agricultural labor for at least four reasons. It involves too much bureaucracy and paperwork. It imposes unreasonable obligations on employers in order to qualify for admission of aliens. It is structured in such a way that

it can be hamstrung if the Labor Department chooses to do so, and it is prone to costly litigation and delays.

Mr. Chairman, I've been a believer in this program. The members of the New England Apple Council have been believers in this program, but we now stand before you defeated. The program cannot be salvaged with the kind of tinkering and fine-tuning which we attempted in 1986. It can only be made useable by radical reform. The Department of Labor must be removed from the gate-keeper role inherent in labor certification. We are proposing that the agricultural employers use an attestation approach similar to that which was enacted in the Business Immigration Reform of 1990 and 1991. The Labor Department would still retain its role in compliance enforcement, but employers would be assured access to the program in a timely manner under a reasonable set of rules designed to make the program useable. Domestic farmworkers' access to U.S. farm jobs and their labor standards must all be protected, but this must not become an avenue for hamstringing the program.

As Congress proceeds to reform legal and illegal immigration, we believe it is your duty to address the reform of this important immigration policy. Given the provisions of H.R. 2202, and the anticipated effect it will have in reducing the current agricultural work force, the need for a program that will work is all the more critical. Agricultural employers across the Nation seek your assistance and pledge to cooperate with you in a meaningful reform effort now as you revisit the parts of IRCA that failed to serve their intended purpose during the last nine years.

We appreciate this opportunity to address these issues.

[The prepared statement of Mr. Young follows:]

PREPARED STATEMENT OF JOHN YOUNG, PRESIDENT, NATIONAL COUNCIL OF
AGRICULTURAL EMPLOYERS

Mr. Chairman, my name is John Young. I am President of the National Council of Agricultural Employers (NCAE) and Executive Director of the New England Apple Council, a member organization of NCAE. I am testifying today on behalf of the National Council of Agricultural Employers and the New England Apple Council.

The National Council of Agricultural Employers is a Washington, D.C. based national association representing growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers in all fifty states. Our membership employs about 75 percent of the nation's agricultural workforce. NCAE's members include farm cooperatives, growers, packers, processors and agricultural associations. NCAE has historically taken a strong interest in immigration policy as it affects agricultural employers. Our membership includes most users of the H-2A temporary agricultural worker program. NCAE was actively involved in the legislative process that resulted in the enactment of the Immigration Reform and Control Act of 1986 (IRCA), including the attempt to "streamline" the H-2A program. NCAE's representation of agricultural employers gives it the background and experience to provide meaningful comments and insight into issues concerning immigration policy and how it affects the employment practices of its members' businesses and the availability of an adequate labor supply.

I also represent the New England Apple Council, of which I am the Executive Director. The New England Apple Council is a non-profit organization with members in all six New England states. We represent 190 growers, who are involved in raising a variety of commodities, among them apples, shade-grown tobacco, greenhouse and nursery crops, vegetables and poultry. The Council was formed in 1965 to address peak season shortages of harvest labor that were undermining the ability of growers in New England to produce. Among the purposes of the organization are "to assist in the areas of legislation, labor management and procurement, and to edit, publish and disseminate information".

Finally it is important for you to know that I am a third generation apple grower in New Hampshire, and that as a grower I have had 33 years direct, hands-on experience with the H-2 and H-2A program. At Mapadot Farms in New Boston, N.H. we started using the H-2 program in 1962 and have employed some H-2 workers in all but 2 seasons since then. I know from personal experience that my orchard operation and the fruit industry in New England in its present form would not exist without the presence of alien workers to supplement the available U.S. workers at harvest time and occasionally for other peak season needs.

The New England Apple Council serves as agent for many of our growers who utilized the H-2 program prior to enactment of IRCA, and now utilize the H-2A program. As agent for our members who use the H-2A program we assist our growers in the processing of Employment Service H-2A Job Orders, applications for redetermination of need, applications for extension of stay, and emergency H-2A labor certification applications. In addition, we file with INS all the I-129 petitions for H-2A alien admissions, and applications for transfer and extension of stay for aliens who transfer from one H-2A certified job opportunity to another.

To give you an idea of the scale of our involvement in the H-2A program, in 1995 we handled 310 H-2A temporary labor certification applications and attendant paperwork, 21 denials of labor certification, 19 redeterminations of need, 10 emergency certification applications, 5 extensions of labor certification and 4 order cancellations. Our growers will employ approximately 2100 H-2A aliens in 1995 in approximately 2700 different job opportunities. Nevertheless, H-2A employment represents less than 15 percent of the total payrolls of our growers for the year. Lest you get the idea that these are large corporate operations, let me hasten to point out that although we have a few large grower members, our members are almost entirely small family farmers who average fewer than 5 H-2A alien employees per farm. While that number may seem small to you, this work force is critical to these members. These workers, together with the U.S. workers employed on these farms, assure that the one "payday" our growers have each year actually happens, i.e. that the apples we have spent our time and money growing get harvested in a timely manner.

NCAE supports the efforts of Congress to gain effective control of illegal immigration, and in particular to simplify, and at the same time bring integrity to, the employment eligibility verification process. Like all employers, we want the employment authorization verification process to be unobtrusive—simple, quick, and accurate—and not impose liability on employers who attempt to do the process right.

One of the ironies of the present employment verification system is that it has not controlled illegal immigration nor the employment of illegal aliens, yet has added substantial potential liability to employers in the hiring process. If the I-9 paperwork is not done precisely, employers are subject to paperwork sanctions even though they employ no illegal aliens. If the documentation process is not done absolutely correctly, using the right words in the right sequence, the employer is subject to documentation discrimination penalties, even though no one is refused employment. This is not what we thought immigration reform was going to be about, and it needs to be addressed. I particularly want to thank you, Mr. Chairman, for including in H.R. 2202 provisions to reduce and simplify the employment eligibility verification process. I would also like to associate myself with the statement of my colleague, Bob Vice, who is director of NCAE.

While our members support effective control of illegal immigration, and a simple but effective employment eligibility verification process, we have an overriding practical concern about the impact of H.R. 2202 on our businesses. The reason we are all here today is that IRCA, while well intended, did not substantially reduce the illegal entry of aliens into the United States nor their participation in the U.S. workforce. After a temporary reduction, INS border apprehensions are now as high as ever. We all know that aliens can still enter the United States illegally, and can obtain fraudulent documents that meet the legal test of reasonably appearing to be genuine, and which employers are therefore obligated to accept without further question.

The continued presence of illegal aliens in the U.S. workforce—albeit now with false documents—has meant that the labor force impacts expected from IRCA have not yet materialized. In agriculture, and in many other industries, the labor pool still includes substantial numbers of workers whose documents will not meet the new tests in H.R. 2202 and its companion legislation in the Senate, S. 269. When this legislation, and the document verification systems it includes, are implemented, substantial numbers of migrant and seasonal agricultural workers currently working in the United States will no longer be eligible for employment, and their employers will be left without sufficient workers. Bob Vice has included in his testimony documentation of this fact. It is the reason we are here.

Mr. Chairman, as you know, Congress visited the issue of potential agricultural labor shortages in enacting IRCA in 1986 by including the Seasonal and Replenishment Agricultural Worker programs in the bill, and by attempting to reform and "streamline" the H-2 program, which became the H-2A program. We worked with Senator Simpson and members of this Subcommittee in an attempt to streamline access to temporary foreign workers through the H-2 program if shortages occurred, and we all thought and hoped that we had accomplished that objective. But after bitter experience over the past 8 years, I am here to tell you that the H-2A program is now more unworkable than ever. Even long time users and defenders of the program like myself have been forced to admit that the program is not workable. Without major reform it cannot meet the need for temporary and seasonal labor that will be created by the immigration reforms now moving through Congress. Without major reform of the H-2 temporary admission category, agricultural employers will face the choice of breaking the law or reducing or eliminating production.

The H-2A program currently meets only a minuscule fraction of U.S. agricultural labor needs. More than 3.8 million "hires" or job opportunities by farmers annually are reported by the U.S. Census of Agriculture. Peak "spot" hired farm employment in 1994 was more than 1 million. Yet fewer than 17,000 agricultural job opportunities were certified for employment of H-2A workers in 1994. Usage of the program has actually declined even since the enactment of IRCA.

The H-2A program, as currently structured, is unworkable in meeting the need for temporary and seasonal agricultural labor created by immigration reform by the following factors: (1) it involves too much bureaucracy and paperwork, (2) it imposes unreasonable obligations on employers in order to qualify for admission of aliens, (3) it is structured in such a way that it can be administratively hamstrung if the Labor Department chooses to do so, and (4) it is prone to costly litigation and delays.

Let me give you some examples. In the New England Apple Council's case every grower's order requires 11 mailings, 1 certified mailing, 1 in-person delivery, 2 overnight deliveries and 2 faxes and entails a minimum of 55 pages of paper transferred plus retained copies. In addition to the employer and the New England Apple Council, 16 different agencies or offices within agencies are involved in the process, even when it works smoothly.

When things don't work smoothly the process becomes even more convoluted. This season one of our growers was denied certification for nearly half of the job opportunities for which he had applied on the grounds that U.S. workers were available. When the U.S. workers failed to appear on the date of need the grower filed a request for a redetermination of need. The redetermination was granted only in part on the grounds that other U.S. workers had become available. When these workers also failed to show up, a second redetermination was requested. This too was granted only in part, and a third redetermination request ultimately had to be filed. These redetermination requests, each of which when granted required an additional INS filing, required a total of 23 additional transactions, 6 by mail, 6 by overnight delivery and 11 by fax. The resulting delays in securing labor caused the loss of 360 worker days and required the grower to file for an extension of time to keep the aliens and to keep his labor camp open for an additional month to complete work. Fortunately, the nature of the crop, and favorable weather, made that possible. If it had been a more perishable commodity, the delay could have been a disaster rather than merely a waste of time and money.

In another case, a Connecticut apple grower requested 7 workers for a June 5, 1995 date of need, but was denied certification on May 17 because the Labor Department of Puerto Rico, to which his job order had been cleared, said they had 7 workers available. On May 24 two of the workers referred to this grower were subsequently referred to fill the order of another grower. A redetermination of need for these two job opportunities was filed, and was granted on May 27, leaving only 10 days to file the INS admission petition and arrange for the admission on aliens to fill these 2 jobs. On June 5, the date of need, no workers were at the job site. On June 6, one day after work was to begin, the Council received a fax that 3 of the original 7 Puerto Rican workers would be arriving "possibly by June 9th". Less than an hour later another fax arrived stating that one of the workers was now unavailable, but adding three new names. On June 7 approval for the admission of the 2 workers for whom the redetermination request was made was received from INS. On the night of June 9, 4 days after the date of need, 5 workers arrived from Puerto Rico, only two of whom were among the original 7 referred. The two H-2A workers also arrived on June 9 and the men finally began work on June 10, 5 days after the grower's date of need.

These are, unfortunately, not isolated examples. During the 1994 season, New England Apple Council members applied for certification for 2439 job opportunities.

After extensive domestic recruitment, 207 migrant U.S. workers were referred for these job opportunities in addition to local referrals. Of these, only 112 actually reported for work and only 55 completed the season.

I do not cite these examples to suggest that U.S. workers should not have access to these jobs, and that that access should not be protected. But what has developed over the last few years is the use of the domestic recruitment and referral process as one more tactic to avoid or delay certification and increase the financial and psychic cost to growers of participation in the program. "Workers" are referred without any regard to whether they seriously intend to take the job, and often without knowledge of the nature of the work. We have observed outrageous examples of workers who went to the Job Service for referral to jobs with growers they had worked for in the past who were virtually forced to accept referral to an H-2A order instead. Puerto Rican workers who had little idea what kind of work they were getting into on the mainland told us that they were threatened with termination of their unemployment benefits if they did not accept referral to job orders in North Carolina. It is little wonder that the statistics on workers showing up and completing the season are so abysmal. Often the workers as well as the growers are victims in this ideological struggle.

We are not alone in our assessment that the H-2A mechanism is broken. This opinion is shared by many of the state government officials with whom we must interact in operating the program. I have attached to this testimony copies of letters from the Commissioner of Agriculture of Massachusetts, the Commissioner of Labor for the state of Connecticut, and several other New England government officials. Their opinion can perhaps best be summarized in the statement of Agriculture Commissioner Healy of Massachusetts, who says "the program at present is extremely complex and needlessly cumbersome and, sadly, is administered with an appalling disregard for practicality, common sense and simple fairness". I urge you to read the attached letters carefully.

Nor are these problems confined to New England. One of the newer H-2A using states is North Carolina, where an increase in labor intensive crop production and very tight labor supplies lead growers to form an association similar to ours to assist them in accessing H-2A workers. The North Carolina Growers Association reports that they filed labor certification requests for approximately 3100 job opportunities for the 1994 season, in addition to about 5000 U.S. workers these growers also employ. The association was referred 687 U.S. workers over the course of the season, many of which were the basis for initial denials of labor certification. Only 292 of these workers ever reported for work, and only 47 completed the season. These U.S. workers filled approximately 1.5 percent of the available job opportunities.

I have attached a copy of a North Carolina Growers Association report and analysis of their referral activity for the 1994 season, which I commend to the Subcommittee. The report documents, for example, extensive and expensive efforts to recruit workers in Florida that included offering free transportation from Florida to North Carolina using JTPA 402 tax money. The effort, which cost the Association about \$6000 and the various government agencies involved about \$50,000, produced 20 referrals, only 4 of whom reported for work, later abandoning their job within 30 days.

I will offer just a few additional examples of Department of Labor harassment and intransigence from other parts of the country.

A first time user of the program in the midwest in 1995 was forced to move his date of need for vegetable harvest workers back four days because a duplicate copy of his application was mailed rather than overnighted to the local Job Service office. In a highly perishable crop, this four day delay could have been disastrous. As it turned out, the local Job Service office did not refer a single worker to the grower during the entire 40 day domestic recruitment period, although the grower himself had recruited 169 domestic workers by his date of need.

A western livestock association which was denied certification in 1994 based on a dispute with DOL over the proper prevailing wage rate appealed the denial to a DOL Administrative Law Judge. The ALJ ruled in favor of the grower association. Less than a year later DOL again denied certification to the same association on the identical fact pattern, forcing the association, at a cost of thousands of dollars, to again appeal the decision to a DOL Administrative Law Judge. The ALJ again ruled in the association's favor.

A relatively recent H-2A applicant in Nevada produces a highly perishable crop of hand clipped onions. DOL denied certification for the grower's entire need for 162 workers, alleging that the grower had failed to meet his domestic worker recruitment obligations. The allegation of bad-faith recruitment hinged on the grower's unavailability to answer telephone calls from ES offices on four occasions during the 40 day domestic recruitment period. Three of the calls were for routine administra-

tive business, and not for the purpose of referring workers. At the time the fourth call was placed, the grower had experienced a failure of his electrical system and requested a delay of 45 minutes to arrange repairs. The denial of certification forced the grower, at substantial expense and delay, to appeal the denial to an Administrative Law Judge, who ruled in the employer's favor.

If time and space permitted, literally hundreds more instances like these could be cited. This experience is known not only to those who use the H-2A program, but to growers who might otherwise use the program. Growers, particularly of perishable commodities who can be held hostage to time, are understandably reluctant to put their crops and livelihoods at risk. And I remind you that this structure now only addresses 17,000 job opportunities nationwide. It is irresponsible to contend that such a system could serve agriculture's need after implementation of immigration reform.

Mr. Chairman, in 1984, '85 and '86, during the last round of comprehensive immigration reform, we worked with this Subcommittee together to try to streamline the H-2A program. We were a strong believer in that approach, as were the other traditional users of the program within NCAE.

One problem with the H-2 program was "creeping regulation". Each time the regulations were amended, the program became more bureaucratic, more user unfriendly, and added additional burdens to employers. As you will recall, the statutory language supporting the H-2 program in the Immigration and Nationality Act of 1952 was less than a sentence, and the rest of the program was regulatory language and administrative interpretations. We attempted to "fix" the structure of the program in 1986 by putting many of the regulatory structures into statute to keep the program from becoming even more user-unfriendly through regulation-creep.

We also attempted to make some streamlining changes in the regulatory requirements, like reducing the application period from 80 to 60 days. We attempted to sharpen the criteria for certification by requiring that there be "able, willing and qualified U.S. workers who will be available at the time and place needed" rather than merely "qualified" U.S. workers. The Labor Department and INS were required to consult with the Department of Agriculture on questions of admission and before issuing regulations. Other modifications were made to try to make the program more usable.

I must report to you that the streamlining effort in which we invested so much time and effort in 1986 failed miserably. The Labor Department ignored completely the Congressional intent to make the program more workable. The Department gave absolutely no cognizance to the new language on criteria for availability of U.S. workers. Consultation with the Department of Agriculture appears to have been perfunctory at best. Interim H-2A regulations were issued 30 days after publication of proposed regulations, with little or no acknowledgement of, nor changes as a result of, the abbreviated public comment period on the proposed regulations. Those interim regulations issued in 1987 are still in effect today; they have never been finalized and the public comments have never been acted upon.

The Wage and Hour Division, which was designated by DOL as the H-2A enforcement agency for DOL after enactment of IRCA, has been even more antagonistic toward users of the program than the Employment and Training Administration was. They have proceeded to review and interpret regulations anew, without regard to prior precedent. H-2A employers have been singled out for compliance monitoring that can only be described as harassment. Employers across the road or across the fence row from H-2A users are never visited; DOL is camped out on the H-2A farms. Employers have come to understand that filing an H-2A application invites white-glove compliance reviews by Employment Standards Administration; they have decided to rescind the invitation! We have been told that last year a top official at the Labor Department declared at a meeting of government officials that she expected to end use of the H-2A program by the end of 1994. The prediction was not accurate, but I can attest to the fact that a valiant attempt was made to fulfill it.

What is wrong with the H-2A program? What is wrong with the program is that it cannot be made to work when the agency which is the program's gatekeeper is implacably opposed to the program. Unfortunately, this is not entirely a nation of laws, it is a nation of laws interpreted and enforced by regulators and administrators. And when the regulators and administrators have an agenda that is different from the lawmakers, the regulators can kill the intentions of the lawmakers, with a thousand tiny piranha-like cuts. The Labor Department's administration of the H-2A program, which has always been antagonistic to employer interests, has degenerated into a pitched battle in which the DOL ALJ's are the field marshals, and only those with virtually unlimited resources can participate.

Mr. Chairman, I have been a believer in this program. The members of the New England Apple Council have been believers in this program. I have dedicated 33

years of my life to helping make this program work. Our members have endured countless nightmares and sleepless nights and expended quite literally millions of dollars to make this program work. But Mr. Chairman, we stand before you defeated. The H-2A program is not a workable means of securing temporary foreign labor for perishable agricultural crops. It is not a program that the average farmer, with average resources and managerial expertise at his command, can access. Even those of us who have years of experience with the program are being forced out of it.

The program can not be salvaged with the kind of tinkering and fine tuning that we attempted in 1986. It can only be made usable by radical reform. The Department of Labor must be removed from the gatekeeper role inherent in the labor certification function. We are proposing that agricultural employers use an attestation approach similar to that which was enacted in the business immigration reforms of 1990 and 1991. The Labor Department would still retain its role in compliance enforcement, within carefully drafted parameters as to what is required to be in compliance, but employers would be assured access to the program in a timely manner under a reasonable set of rules designed to make the program usable and keep the U.S. agricultural industry competitive and protect the U.S. jobs that are generated by it and dependent on it. Domestic farmworkers' access to U.S. farm jobs, and their labor standards, must be protected too. But this must not become the avenue for killing the program.

We are convinced that it is possible to reform the H-2 provision of the INA to create a workable temporary agricultural worker program that will serve the interests of agricultural employers, domestic farmworkers, alien farmworkers, and U.S. workers dependent on the health and growth of U.S. agriculture. As Congress proceeds to reform illegal and legal immigration we believe it is your duty to address the reform of this important aspect of immigration policy, and to create a program that will work. Agricultural employers pledge to cooperate with you in that effort.

We appreciate your holding this hearing to address this important problem.

COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS,
DEPARTMENT OF FOOD AND AGRICULTURE,
Boston, MA, September 28, 1995.

Hon. ALAN SIMPSON,
Chairman, Immigration Subcommittee, Senate Judiciary Committee, U.S. Senate,
Washington, DC.

MR. CHAIRMAN AND DISTINGUISHED SUBCOMMITTEE MEMBERS: I am writing to respectfully urge you to revise the present H2A program, overseen by the U.S. Department of Labor. The program at present is extremely complex and needlessly cumbersome and, sadly, is administrated with an appalling disregard for practicality, common sense, and simple fairness.

It appears that DOL officials see farmers as employers of last resort, with a disproportionate number of lackadaisical, troublesome and even potentially dangerous domestic workers being referred. Further, referrals are often made with little advance notice, giving the employer no opportunity to make preparations to feed and house them, or to verify their work documents, references, and employment history, and with no consideration of the offshore workers who may have been hired. Indeed, federal officials in Massachusetts have actually told farmers they cannot refuse to hire any domestic applicant, regardless of ability, attitude or experience, and have made it extremely difficult to dismiss an unsatisfactory worker, regardless of cause.

Many important issues and requirements of the program are not specifically enumerated, leaving entirely too much discretion in the hands of individual bureaucrats, who seemingly make up rules as they go along. For several years now, for example, despite repeated requests, DOL has refused to provide farmers with clear, concise written guidelines of the myriad regulations which they are expected to follow.

Virtually any type of business can temporarily suspend operations until an adverse situation has improved: On the other hand, once a farmer has planted a crop he has irrevocably committed himself to cultivating and harvesting it, or face devastating financial loss. In addition, farmers must adhere to nature's demanding and unyielding schedule, where the difference between a ripe product and a spoiled one is often the matter of a few hours. The H2A program must finally address these unique requirements, and make some accommodation for the needs of the farmer. Farmers cannot be expected to constantly supervise new employees, particularly those having no aptitude or interest in the task at hand, nor should they be asked

to continually train replacements for workers who only stay on the job for a few days.

Again, I and the farmers of Massachusetts respectfully ask that you address these serious problems and effectuate sorely needed and long overdue improvements in the H2A program, especially in regard to re-establish some sort of accountability on the part of the government agencies involved.

Thank you very much for your kind attention to this important matter.

Sincerely,

JONATHAN L. HEALY,
Commissioner.

COMMONWEALTH OF MASSACHUSETTS,
MASSACHUSETTS OFFICE OF BUSINESS DEVELOPMENT,
Boston, MA, September 28, 1995.

Hon. ALAN K. SIMPSON,
Chairman, Immigration Subcommittee, Senate Judiciary Committee, U.S. Senate, Washington, DC.

MR. CHAIRMAN AND DISTINGUISHED SUBCOMMITTEE MEMBERS: I am writing to respectfully, yet strongly, urge you to overhaul the current H-2A program, administered by the U.S. Department of Labor. The current program is not user friendly, and in more than one instance, has proven to be a major hindrance in agricultural business development here in Massachusetts.

One example: the state's effort to recruit a foreign fruit processor was thwarted by our inability to assure the company of a stable and consistent supply of agricultural workers that were required for their operation. Not only was the company planning a manufacturing facility in Massachusetts, but they were also seeking to locate several hundred acres of fruit orchards here.

The current demand for agricultural workers in Massachusetts cannot be met and so many of our farmers roll the dice, hoping to be in compliance with a program for which they can't get clear, simple guidelines. The unreliability of an agricultural labor force because of this program was one of the primary reasons that caused the company to locate in another state with a much larger agricultural labor supply.

The expansion of our existing agricultural base in Massachusetts has been hampered on many occasions by farmers' inability to have access to a work force necessary to harvest the crops they wish to plant. The expansion (or at least the stabilization) of our agricultural base is a critical part in the Commonwealth of Massachusetts' effort to maintain our precious open space. It is my firm belief that the H-2A program is a direct cause of our difficulty in this effort.

I again strongly urge you to revise this program, not only from the farmer's viewpoint but also from an agricultural business development and environmental perspective.

Sincerely,

KENT A. LAGE,
Agricultural Industry Specialist.

CONNECTICUT DEPARTMENT OF LABOR,
Wethersfield, CT, September 26, 1995.

Hon. ALAN SIMPSON,
Chairman, Immigration Subcommittee, Senate Judiciary Committee, U.S. Senate, Washington, DC.

MR. CHAIRMAN AND DISTINGUISHED SUBCOMMITTEE MEMBERS: This is to bring to your attention the failure of the H2A, Alien Worker Program, and the need for a new approach to the need for temporary agricultural workers to assist the farmers and fruit growers in Connecticut.

Our growers who use the H2A program find it a bureaucratic nightmare and not responsive to the conditions and the brief time span in which they must harvest their crop.

Because of the uncertainties of the H2A, no one benefits; and it places the farmers and their employees in jeopardy. Farmers must be guaranteed an available labor supply for the peak periods of harvest, in order to provide year-round jobs to all workers.

The financial stability of agriculture here in Connecticut is dependent upon a new approach to the temporary worker issue.

Sincerely,

JAMES P. BUTLER,
Labor Commissioner.

STATE OF CONNECTICUT,
DEPARTMENT OF AGRICULTURE,
Hartford, CT, September 28, 1995.

HON. ALAN SIMPSON,
*Chairman, Immigration Subcommittee, Senate Judiciary Committee, U.S. Senate,
Washington DC.*

MR. CHAIRMAN AND DISTINGUISHED SUBCOMMITTEE MEMBERS: I am writing to bring to your attention the need for a complete revision of the H2A program. Our growers who use the H2A program find it to be extremely complex and cumbersome, and they are not able to meet the changes in crop conditions that agriculture often faces.

Growers by necessity must commit to financing, planting, and the costs of growing a crop. Without a working H2A program all of the above steps are wasted. Harvesting is the final stage, and as the H2A program has been administered, farmers have no way to be assured that their crops will be harvested.

In one instance, in 1995 a grower was promised U.S. workers. He was denied certification for almost half of his H2A work force, and when workers did not appear, it resulted in requesting three re-determinations, which increased the paper work from one to four set of papers. The resulting delay caused 360 lost man days work. This made it necessary for the grower to file for an H2A extension and keep his camp open for an extra month. It was an unnecessary waste of time and money, which benefited no one.

Our Department has hosted a committee composed of Labor Department officials, Agricultural Department officials, Congressional representatives, worker representatives, and growers. We have had several meetings and discussions. The one thing that we all agree on is that the H2A program does not work. Because of the uncertainties of the program, no one benefits. Farmers have no guarantee of available labor, and all workers, U.S. as well as H2A, have no guarantee of jobs.

I urge you and your committee to look closely at the H2A program. Reform and streamlining are needed and are way overdue. A program which assures a sufficient supply of labor will not only benefit those workers, it will assure that the jobs of the year round work force will be preserved and the financial stability of agriculture here in Connecticut will be preserved.

Thank you for your kind attention to this very important matter.

Sincerely,

ROBERT R. PELLEGRINO,
Bureau Director, Agricultural Development and Resource Preservation.

NORTH CAROLINA GROWERS ASSOCIATION INC.—SUMMARY AND STATISTICAL ANALYSIS
OF U.S. REFERRALS FOR 1994 SEASON

Total SESA Referrals

Total Jobs	3,100
Total Referrals	687
Total Reported	292
Total Completed	47

In 1994 the NCGA requested labor certification for 3100 workers to supplement our labor force. Of the 687 referred, 292 reported to work. Of the 292 workers who reported, 222 abandoned their employment, 23 were terminated for lawful job related reasons and only 47 completed the season. *Note: It was reported by NCGA members that 19 of the workers that completed the season should have been terminated for contract violations but were not disciplined for fear of persecution by the government or frivolous litigation from Legal Services.* The NCGA filed job orders for approximately 3100 workers; the 47 U.S. workers that completed the season filled 1.5% of those jobs. The U.S. workers that reported to work but did not complete the season averaged 53 days on the job. Of the 687 workers referred only 10 workers reported to work on starting day.

Referrals by State

Puerto Rico	562
Florida	98
North Carolina	24
New York	2
South Carolina	1
Total Referrals	687

Statistical Analysis by State or Commonwealth

Puerto Rico:	
Total Referred	562
Total Reported to Work	256
Completed Season	46
Average Days Worked	53
Florida:	
Total Referred	98
Total Reported to Work	30
Completed Season	1
Average Days Worked	52
North Carolina:	
Total Referred	24
Total Reported to Work	4
Completed Season	0
Average Days Worked	57

SUMMARY

The paucity of U.S. workers to plant, cultivate and harvest our crops is evidenced by the above referenced data and the summary that follows. The U.S. Department of Labor—influenced by radical worker advocacy groups and the liberal politics of the Clinton Administration—attempted to discourage the use of the H-2A program, by government obstruction and the referral of unsuitable and inept workers. The summary of the recruitment process is limited to recruitment and referral of U.S. workers and does not portray the entire attack on the NCGA and the H-2A program. There was obvious collusion between appointed (not elected) officials and radical worker advocacy groups, who in concert, deliberately attempted to kill the H-2A program. This attack on the H2-A program was initiated by requiring the NCGA to travel to Florida for positive recruitment on an unprecedented three day itinerary to six different FDL local offices. (This was imposed on the NCGA in spite of our strong objections based on the historical ineffectiveness of such recruitment.) Under pressure from Washington, U.S. DOL and FDL began a massive TV, newspaper, radio and call-in recruitment campaign (to locate U.S. workers) to run concurrently with our recruitment visit. While on positive recruitment in Florida (and continuing until July 1994) FDL and the 402 Grantee offered free transportation to any worker who would accept an NCGA job. In spite of all of these efforts the FDL only produced 20 available workers. (Results: 16 workers did not report to work, four workers reported to work and abandoned within 30 days.) The administrative cost to the NCGA for this effort was approximately \$6000.00. The government's cost including FDL staff time, U.S. DOL Region IV staff time, U.S. DOL National Office staff time, 402 Grantee staff time, 402 discretionary funds (used to give free tickets), travel expenses and phone expenses—even by conservative estimates—exceeded \$50,000.00. The cost per worker for the four workers (who worked only 30 days) was \$14,000 per worker. We have never been able to ascertain exactly how much of the \$200,000.00 of 402 discretionary funds was used to give away free tickets to NC. It was such a failure and a waste of taxpayers' money we probably never will know. We do know that nearly all of the workers referred from Florida said they were traveling on 402 money. Where all those workers traveled with that money is unknown; they never reported to our job site. The concept of providing free or loaned transportation is fundamentally flawed, in that it is susceptible to work fraud and the ridiculous premise that the workers will repay the money. We have found that, when workers have used their own money to travel to the job, they are far more likely to report to work and become dependable workers. When we expressed our concern that such programs were historically wasteful and ineffective, Charles Kane, head of the 402 programs in Washington, stated that "\$200,000.00 is just a drop in the bucket". We strongly disagree! Ironically it is apparent that at least four of the workers referred from Florida (traveling on 402 funds) were illegal aliens.

The second phase of the attack was to continue the referral of inept and unqualified workers from Puerto Rico. The Puerto Rican Department of Labor proved themselves to be totally incompetent in the selection and referral of workers to the mainland. We were forced to suffer emotionally and financially as they blundered through each stage of the process. The primary reason for the poor performance of the workers referred by PRDOL was the total lack of any screening. This was evidenced by the relatively few real farmworkers referred. We were informed by the workers themselves that they were "plucked from the unemployment line" and informed that they were going to NC or would lose their benefits. The trouble began when Puerto Rican DOL informed us just before starting day that the workers would be two weeks late. When the workers finally did depart further complications were caused by the infiltration of union organizers. While in transit the workers were met by worker advocates (opposed to the H2A program) who proceeded to incite the workers into what was described as a riot in the Miami airport. Approximately 50% of the workers that initially had money for the bus ride to NC suddenly claimed they had none and refused to load onto the bus. I was awakened in the middle of the night with the news of the situation in Miami. After tense negotiations it was decided that the NCGA would cover the cost of the bus ride. (NCGA was later reimbursed by PRDOL.) I was literally stunned by what I witnessed as the first group arrived. A significant portion of the workers were under the influence of alcohol, several exhibiting open signs of drunkenness. One worker had consumed so much alcohol that he went into convulsions as a result of alcohol poisoning and had to be evacuated by EMS. We gave this worker another chance and placed him on the job after his release from the hospital. He was terminated several days later for stealing other workers' food and vomiting in the camp and refusing to clean it up. Three weeks later the same worker was stood before TV cameras to impugn our reputation saying he had to leave the job for lack of work. Problems continued with the first group of referrals as the DOL informed us that they were cutting 228 certifications on our next order for workers that they had found to be available in Florida and Puerto Rico. Again in spite for our objections, which were supported by the recent events, PRDOL and FDL insisted that 228 works were in fact available and NCGA certifications were cut 228 workers. Our predictions and fears were soon realized when only 38 workers from Puerto Rico and none from Florida reported for work, leaving us 190 workers short. More chaos ensued as PRDOL advised us they had misunderstood the starting date of the order and the 38 workers would be arriving two weeks late. It was now apparent that Puerto Rico had learned nothing from the mistakes of their first attempt. Herbie Velez of PRDOL arrived with the 38 workers and advised us that PRDOL had loaned the workers the travel money. As we departed from the airport Mr. Velez cautioned us "whatever you do don't stop near a liquor store". At that moment we realized that our problems had only just begun. For example the workers stole from other workers, stole money from employers, assaulted other workers and in one case assaulted a grower, were arrested for DUI, trashed our housing facilities, filed bogus workers' compensation claims, used drugs and alcohol on and off the job, malingered, exhibited drunk and disorderly conduct, filed spurious complaints with the SESA and DOL and were in general very poor workers. Throughout the season we were visited on site by officials of the U.S. Department of Labor, ETA and ESA from the national, regional and state offices, and the NCESC. Workers advocates from NC Legal Services, Florida Rural Legal, Farmworker Justice Fund and CATA (worker union) visited many of our facilities several times each week. This level of monitoring went way beyond the norm and was invasive, intrusive and a detriment to the conduct of normal business.

This summary and referral report reaffirms why we must continue to participate in the H2A program. There are not sufficient U.S. workers to fill our labor needs even after the federal government has mobilized two regions, two states, one commonwealth and spent hundreds of thousands of taxpayers money to find workers. We are known to offer the best job opportunities in NC and have a reputation of maintaining a higher level of compliance with all labor laws than the non-H2A community. It is estimated that 60% to 80% of the agricultural work force are illegal aliens. H2A workers make up less than 2% of the work force. It is against the law to employ illegal aliens and we have attempted to comply with that law by using a program that was sanctioned by the Congress of the United States for that very purpose. It is a well known fact that is not the presence of H2A workers, but the presence of illegal aliens that has the greatest negative impact on the wages and working conditions of U.S. workers. Yet no government official has lifted a finger to dissuade the use of illegal aliens in North Carolina. Just the opposite has happened here. The government has attempted to force us into using illegal aliens rather than lawfully admitted H-2A workers. The plan to discourage us has been effective, however we are discouraged not by the poor performance of the referrals and

the hardships they presented, but by the fact that our government has made a deliberate attempt to eviscerate the H-2A program and the NCGA.

Mr. SMITH. Thank you, Mr. Young. Ms. Huerta.

**STATEMENT OF DOLORES HUERTA, FIRST VICE PRESIDENT,
UNITED FARM WORKERS, AFL-CIO**

Ms. HUERTA. My name is Dolores Huerta. I'm the first vice president of the United Farm Workers Union, and I have been involved in the whole area of farm labor organizing for the last 40 years.

Our union has offices, 23 offices, throughout the country. We have offices throughout California, including the Catilla Valley, and also in Arizona, Texas, Florida, and the State of Washington. We also have collective bargaining agreements in the State of California and the State of Washington.

I was one of those who was a member of the Commission of Agricultural Workers. We had hearings throughout the United States for about a 2-year period, and, as was reported earlier, in the course of those hearings not once did any one employer testify that they had a labor shortage. Our report was given to the U.S. Congress, and every member of the Congress should have that report which was submitted in February 1993.

Mr. Henry Voss, who was then the secretary of agriculture for the State of California and a former president of the Farm Bureau Federation, was the chair of that Commission. And he, along with the rest of the Commissioners, said that there was no need for any additional farmworker programs at that time.

The existing H-2A program allows employers to apply for workers when they need them. I think that the only thing that they don't like about this program is that they do have to recruit workers before they are allowed to bring them in, and they find that rather onerous. And, you know, it's always been a mystery to me in all the years that I have been involved with organizing farmworkers why employers find it easier to go to Mexico and to the Caribbean to bring in workers then, say, go to Fresno County in California, which is, you know, one of the largest areas, or the Rio Grande Valley of Texas, where the unemployment figures are, like, about 40 percent.

Over the years, we have seen that employers have done very little to develop their workforces or local work forces. In negotiating with employers who want to continue using labor contractors, and more and more we find that they do not take responsibility for hiring their own workers, they turn the recruitment of workers over to oftentimes unscrupulous labor contractors and they don't really know what happens to those workers. And, apparently, they do not care about the workers.

Local farmworkers find that jobs are almost inaccessible to them. They do not know where the jobs are. The farms are far from the cities. So, we have these double-digit unemployment rates, as has been reported earlier, in all of the agricultural areas of California and also in Texas and Arizona.

Now one of the things that the Commission also recommended that has not been acted on, and which we would like the employers to participate in, is to have our employment services do the recruitment for the growers, have them report to the employment services

how many workers that they need. We have this big, you know, numbers game, right? We say there's not a shortage of workers, the employers say there's a shortage of workers. Well, why don't we have a system where workers can go where they can look for jobs? It was reported earlier by one of the people that testified that there's like 100,000 workers that go to employment services trying to find jobs and are never referred to work. And one of the things that we found out in our hearings is that the employers rarely go to the employment services to place job orders. They prefer, again, to go to the labor contractor system which then gives a cause for all of the violations, wage violations, et cetera.

Our youth especially are being cut out of these jobs. We need—I would like to see some kind of an agricorp like they had during World War II, you know, when my brothers and myself, we all went off to work in the fields because there was a labor shortage. Right now, our dropout rate among the Latino youth is still very high. It's about 50 percent. It's even higher in the rural areas. We see that our prison population in the State of California under Governor Wilson, our prison population has increased 500 percent. These young people are going to jail because they can't find jobs. And they are turning to crime and delinquency. This doesn't have to be that way.

The wages of farmworkers have decreased in the past decade. This was also a finding of the Commission. But yet the profits of agribusiness have increased. Because of the piece rate system, we find that many farmworkers are making less than the minimum wage, and as it was said here, "Well that's illegal, if employers don't pay the minimum wage." But yet, we find that there's other labor laws that are being violated without, I think, any guilt on the part of the employers.

It's really blatantly unfair that the people who feed our Nation are not even making enough money to feed themselves and their families. The Commission found that the average wage of farm workers throughout the country is like \$6,000 a year. No one can live on \$6,000 a year. And this, of course, not only impacts on the farmworkers and their families, it impacts on the local businesses that depend on the farmworkers where they buy their shoes, their clothes, where they buy their washing machines. It impacts on everybody. Yet, the employers have not done anything about raising the wages of farmworkers.

One multitomato grower that I've been negotiating with now for the last 2 years, who is worth over \$100,000, has not given his workers a wage increase for 9 years. And when we're at that bargaining table, he says, "You know, I've got to keep up with the competition. I'm not going to increase the wages because nobody else is going to do it." In that same tomato field, we have a video of about 60 children that are working in that field. These farmworker families have to bring their kids into the fields to help them pick the crops so that they can survive, just so that they can eat, and this is wrong.

There's a tremendous oversupply of workers. Workers know that they cannot even complain about what's happening. They can't complain about being poisoned by pesticides. They can't complain about sexual harassment, about bad working conditions, because

they know if they complain, they will get fired and there will be somebody there to replace them.

I just want to mention the—we had an election of 1,600 workers last December in a Big Rose company in Toleno, CA. There was not a single undocumented worker in that field. Recently, we've had elections this year covering about another 3,500 workers. There were no undocumented workers in those fields. We are out there every single day with the workers. If there are undocumented workers, they might be in isolated areas where nobody can get to them, and where they can be exploited. The numbers that are being thrown out here are absolutely insane.

Before the Simpson-Rodino bill was passed—remember, California provides 50 percent of the food for the whole country. Before the Simpson-Rodino bill, the SAW program was passed, the seasonal agricultural workers legalization program, our unemployment office in California reported that we had 600,000 farmworkers that were identified in the employment services system. After the seasonal agricultural program was passed, there was 1,300,000 workers that got their legalization status. Half of those are in California. Add an additional 700,000 workers. So, we have three and four workers for every job. What's happening with the workers is that, before where they would work three months during the harvest season, now they only get 6 weeks of work during the harvest season because there are so many workers that the employers can double the number of workers that are needed.

The other thing is that workers migrate——

Mr. SMITH. Ms. Huerta, we're going to need to move on here.

Ms. HUERTA. Ok, well just let me say, California farmworkers, they migrate from California to New York. They migrate from California to Florida. Farmworkers from Texas, they—workers will go to the jobs, No. 1, if they are going to get treated fairly, if they are going to get paid properly, and if they can know where the jobs are at.

[The prepared statement of Ms. Huerta follows:]

PREPARED STATEMENT OF DOLORES HUERTA, FIRST VICE PRESIDENT, UNITED FARM WORKERS, AFL-CIO

My name is Dolores Huerta, and I am the co-founder of the United Farm Workers Union with the late Cesar Chavez. Our union was founded in 1962 and my work with farmworkers preceded that with a community organization called CSO which worked in the spanish-speaking communities throughout California and Arizona.

Our union is located in California, Arizona, Texas, Florida and Washington State. Our union collective bargaining agreements are in California and Washington state.

I was also a member of the Commission on Agricultural Workers commissioned by the U.S. Congress to do an intensive study on the effect of IRCA on agricultural workers. Our commission was chaired by Harry Voss, then Secretary of Agriculture for the state of California and former President of the California Farm Bureau. We conducted hearings throughout the United States hearing testimony from all segments of the Agricultural Community employers, workers, academics, government and community advocates. Our report was submitted to the Congress in February of 1993.

The Commission reported to the Congress that no new foreign worker programs were needed. In the two years of hearings not one employer testified of a labor shortage.

The existing H-2A program which allows employers to apply for foreign workers in case of shortages gives them more than adequate protection. However, they must make an attempt to recruit domestic farm workers before they can be certified for foreign workers. This is what they find onerous. Agricultural employers are notorious for not taking responsibility for their workers. In fact, they have more and more

turned the recruitment of their labor force to third parties to whom they are willing to give handsome commissions.

Employers have done little to develop their work force; they are not improving wages or providing benefits. In negotiations with employers, they want to continue using labor contractors. This results in many workers working at near slave conditions and peonage.

The Commission also recommended that the Employment Services of the United States develop programs to bring workers to the employers. At present, workers have to go through unscrupulous labor contractors to find employment in agriculture and be exposed to all types of extortion to get jobs. This ranges from gifts, bribes, illegal purchases of liquor, sexual favors etc.

An agricornp is needed, especially for the youth who get the brunt of employment discrimination. Employers want to import foreign workers yet will not give the local rural unemployed youth jobs in agriculture. This in turn fosters delinquency and crime and dependence on welfare.

The wages of the farmworkers have decreased in the past decade. The cost of living and the profits of Agribusiness have increased, yet the wages of farmworkers have gone down. Because of the piece rate system many workers make less than minimum wage, employers shave hours on their reports to make it appear that they are complying with minimum wage laws. It is blatantly unjust that the workers who feed our nation doing back breaking labor in the heat and the cold are not earning enough money to feed themselves or their families adequately let alone shelter, clothe and educate them.

The response at the bargaining table of one wealthy tomato grower who has not given his workers a wage increase in six years is, "I need to keep up with the competition".

We have seen an increase in the use of child labor as families need to bring the children into the fields to earn enough to eat.

SURPLUS OF WORKERS

There is a tremendous oversupply of workers. The rural areas of the United States have constant double digit unemployment. These surpluses exacerbate the above mentioned conditions, and make workers afraid to complain about bad working conditions such as lack of sanitation, cheating on hours, sexual harassment, pesticide poisoning, etc. If they complain they will get fired and even black listed. Workers know there are three to four workers ready to take their jobs.

Employers are notorious for violating the labor laws and they have attorneys who make a business out of advising them how to disobey the laws that protect farm workers. Yet the few legal services that farmworkers can turn to are now being cut by this Congress.

The labor laws are not being enforced. There are not enough enforcement agents to correct this epidemic of violations.

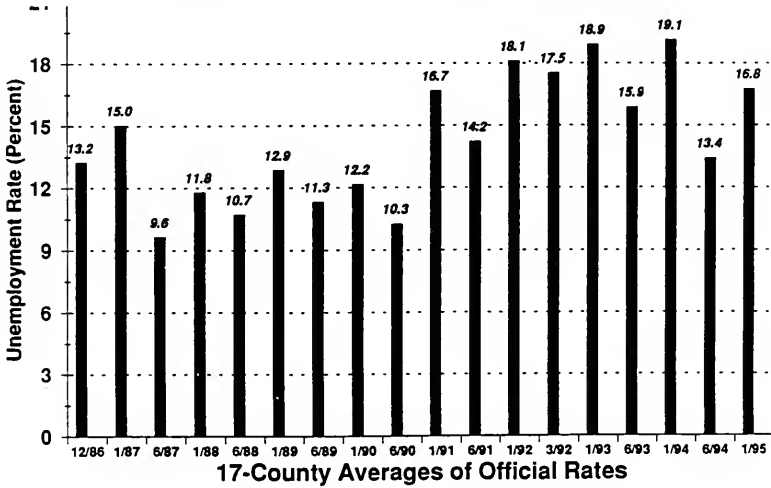
This testimony I bring today is not new. I could pull out a testimony from 20 years ago and it would be the same. The only thing that is different now is that farmworkers do have a voice through the United Farm Workers Union. We have been able to improve through union contracts, the wages and working conditions of workers, obtain for them a comprehensive medical plan named after a former U.S. Senator, Robert F. Kennedy, and we even have over 2000 farmworkers getting an old age pension through our Juan de La Cruz pension plan.

Yes, there are some employers of conscience.

The history of the infamous bracero program that damaged the lives of hundreds of thousands of workers on both sides of the boarder is a chapter that we do not want to repeat.

Our country has had a long painful road to rid itself of slavery. Let us not turn back not even one step to allow employers to bring in foreign workers at a time when our unemployment rates in rural U.S. are at the level of the great depression level and further stymie the progress that is being made to better the lives of farmworkers in the United States.

Graph 1: Unemployment Rates, 1986-95
Counties With High Seasonal Labor Use



The Sacramento Bee

Locally owned and edited for 138 years

JAMES McCLATCHY, editor, 1857-1883

C. K. McCLATCHY, editor, president, 1883-1936

ELEANOR McCLATCHY, president, 1936-1978

WALTER P. JONES, editor, 1936-1974

C. K. McCLATCHY, editor, 1974-1989

GREGORY FAYRE, executive editor

PETER SCHRAG, editorial page editor

FRANK R. J. WHITTAKER, president and general manager

Bringing back braceros

With public concern over immigration growing in many states — witness California's Proposition 187 — key members of Congress are drafting legislation to tighten restrictions on both legal and illegal immigration.

That's generating increasing worries among California growers, who fear that crackdowns on immigration will deprive them of needed labor. That fear, as The Bee recently reported, is leading some of the state's biggest agricultural producers to work behind the scenes to include a liberal guest-worker program for agricultural labor in any immigration bill that emerges.

The law already allows growers to import foreign agricultural workers, but only after the U.S. Department of Labor certifies that a labor shortage exist and that domestic workers will not be adversely affected by imported workers. Before bringing in aliens, farmers must try to recruit domestic workers first and must guarantee housing and provide written contracts to all seasonal workers.

But a draft plan now being circulated by the National Council of Agricultural Employers would permit farmers alone to merely attest that a labor shortage exists by filing a document with the local job service office. Officials there would simply check the form for completeness and mark it "accepted" and return it to the employer.

The plan has no requirement to ensure recruitment of domestic workers first, or for growers to provide housing for alien harvesters or to give them written contracts. If en-

acted, it would open the floodgates to cheap foreign labor, while providing none of the protections and guarantees that existing federal guest-worker programs include.

The proposal is being floated at a time when even farmers concede that there is no shortage of agricultural workers. On the contrary, according to the state Employment Development Department, rarely since 1986 have unemployment rates in California's leading agricultural counties dipped below 10 percent during peak harvest periods. Official post-harvest unemployment rates fluctuate between 14 percent and 20 percent, and farm-worker advocates say unemployment is worse than the official statistics indicate. Moreover, in findings and recommendations to Congress just released, the federal Commission on Immigration Reform states that it "believes that an agricultural guest-worker program is not in the national best interest and unanimously and strongly agrees that such a program would be a grievous mistake."

A decade ago, Congress, in response to similar grower pressure, created guest-worker exceptions only to discover that the claims of severe labor shortages were exaggerated and in some cases simply false. Before the nation repeats that cycle — with major consequences both in illegal immigration and in depressed wages for American workers — there ought to be certainty that even when decent wages are offered, no American workers are available. And there certainly ought to be no guest-worker program controlled by growers for their own benefit.

FOR: ARTIE RODRIGUEZ
Dolores Huerta
FM: Marc Grossman

Mr. SMITH. Thank you. Mr. Williams.

**STATEMENT OF ROBERT A. WILLIAMS, ATTORNEY, FLORIDA
RURAL LEGAL SERVICES, INC.**

Mr. WILLIAMS. Thank you, Mr. Chairman.

I can tell you no valid justification exists for a new temporary farmworker program in agriculture. There is no farmworker shortage in the United States, as the growers themselves have admitted. Since the passage of IRCA, study after study has shown that there's a surplus of workers in agriculture.

I was thinking about what Mr. Estrada said earlier about the free market as it applies to agricultural labor. There are two sides to every transaction. Buyers love a surplus. Sellers, including those who sell their labor to support their families, do not like a surplus. The continuing surplus of farmworkers may be good news for growers, but is bad news for over 1 million citizens and permanent residents who work in the fields.

The oversupply of farm labor means there's little hope for improvement in the lives of America's poorest work force. It means, for example, that the average migrant farmworker will only be able find work 29 weeks out of the year. It means that 87 percent of the migrant farmworkers in the United States will continue to go without health insurance. It means that the median income for migrant workers will remain at \$5,000 a year. And it means that hundreds of thousands of children of migrant and formerly migrant workers will continue to live in poverty.

Congress can do something to alleviate these conditions if only Congress will resist the calls for a new guest worker program and let the private market reward agricultural employers who seek to attract and retain a legal work force by offering better wages and working conditions. That is how it usually works in the American economy. That is how it should work in agriculture. It is the economically and morally right thing to do. If, however, Congress continues to intervene on the side of the growers to maintain the status quo of underemployment and poverty, the United States will become more and more dependent on migrant labor from Mexico.

I believe our experience has shown that we cannot protect such workers from abuse and that ultimately any foreign worker program will create resentment and ill will between the United States and the sending countries. Such programs, in the end, only increase the pressure to immigrate to this country as they introduce thousands of individuals who might otherwise never have left their country for life and work in the United States.

The major barriers to the effective enforcement of employer sanctions in agriculture is not the absence of a secure ID card, but the pervasive use of farm labor contractors in agriculture. Employer sanctions won't work in agriculture as long as the growers can use farm labor contractors to evade the law. I've been involved in trying to enforce laws for farmworkers for 20 years. I have never seen a labor law that was effectively enforced in the agricultural setting. And the main reason, the main loophole in all our legislation, is the continued existence of the farm labor contractor. Therefore, a new guest worker program would not substitute a legal work force

for an illegal work force, as the growers claim, but would simply add to the labor surplus and would further worsen the situation of the permanent residents and citizens who compose the majority of the farm labor workers.

Growers contend that there are not U.S. workers available to fill the needed jobs if the United States gets serious about removing illegal aliens from the work force, but the overwhelming evidence shows widespread, pervasive underemployment and unemployment among farmworkers. Last year, over 70,000 workers, registered for work at job service offices throughout the Nation, were not referred to any job. And, I might add, nearly 20,000 applied in Texas. Unemployed—and these weren't illegal aliens; these were U.S. citizens or residents who were farmworkers who went to the job service, said, "I need a job," and the job service said, "We don't have any jobs for you."

The attestation scheme proposed by the growers would cede control of the Nation's borders to the industry most responsible for the continued flow of illegal immigrants into this country. There's a big difference between the labor certification system that we have now and an attestation scheme. Under labor certification, the Government determines when the border is going to be open, so that workers can come across. Under attestation, the employer opens the border gates to farmworkers by promising to meet certain labor conditions. And that gate remains open until somebody makes a complaint, and the Labor Department takes away the permission, closes the border for that particular employer. No one at DOL would even check to see that the foreign workers were filling jobs for which no workers could be found or that such workers were being paid the minimum wage. The only check on the grower's unlimited access to foreign workers would be if a worker filed a complaint. Enforcement of the attestation conditions would rest totally on the ability of the U.S. farmworkers to conduct their own investigations and then convince the Department to take action. And any sanctions that were imposed could be evaded easily by the use of farm labor contractors who would be permitted to file attestations under the grower's plan.

Such a proposal will almost surely result in the displacement of hundreds of thousands of U.S. workers and rampant abuse of the foreign workers' rights similar to what occurred the *bracero* program. I urge this committee not to go down that road again.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF ROBERT A. WILLIAMS, ATTORNEY, FLORIDA RURAL LEGAL SERVICES, INC.

Mr. Chairman, my name is Robert Williams. I am an attorney with Florida Rural Legal Services, Inc. My appearance today is on behalf of our farmworker clients. In our view, no valid justification exists for a new temporary foreign worker program.

THERE IS NO FARMWORKER SHORTAGE

First and foremost, there is no farmworker shortage in the U.S. as the growers themselves have admitted. Since the passage of the Immigration Reform and Control Act of 1986 (IRCA), study after study has shown that there is a surplus of workers in agriculture. Last year, as in years past, approximately 1.6 million farmworkers filled several million short-term seasonal jobs in agriculture.

If there were a shortage, simple economics tells us that wages would have risen as employers bid up the price of labor. Unfortunately, since the mid 1980s, there

has been little incentive for employers to increase benefits or improve working conditions for farmworkers. Wages and working conditions have stagnated or actually deteriorated, according to both the Commission on Agricultural Workers and DOL's National Agricultural Worker Survey. Only a few weeks ago, tomato pickers in Immokalee, Florida were protesting yet another payout. Wages for citrus workers in Southwest Florida have also fallen since 1990 despite the fact that more workers have been needed each year as new groves come into production.

If there were a shortage, one would expect to see changes in farming practices to employ fewer workers, either by increased mechanization or switching to less labor-intensive crops. Instead, there has been a significant expansion of labor-intensive fruit, vegetable, and horticultural specialty production in the United States.

If there were a shortage, one would think that the growers would have heeded the advice of the Commission that agriculture must improve its labor management practices. Instead, they have relied more heavily on farm labor contractors to provide them with a work force.

While the fact that there is a continuing surplus of farmworkers may be good news for growers, it is bad news for over one million citizens and permanent residents who work in the fields:

The oversupply of farm labor means that there is little hope for improvement in the lives of America's poorest work force;

It means, for example, that the average migrant farmworker will only be able to find work 29 weeks out of the year;

It means 87 percent of the migrant farmworkers will continue to go without health insurance;

It means that the median income for migrant workers in the U.S. will remain at \$5,000.00 per year; and

It means that hundreds of thousands of children of migrant and formerly migrant workers will continue to live in poverty.

Congress can do something to alleviate these conditions, if only Congress will resist the calls for a new guest worker program and let the private market reward agricultural employers who seek to attract and retain a legal workforce by offering better wages and working conditions. That is how it usually works in the American economy; that is how it should work in agriculture. It is the economically and morally right thing to do. If, however, Congress continues to intervene on the side of the growers to maintain the status quo of underemployment and poverty, the United States will become more and more dependent on migrant labor from Mexico. I believe our experience has shown that we cannot protect such workers from abuse and that, ultimately, any foreign worker program will create resentment and ill-will between the United States and the sending countries. Such programs in the end only increase the pressure to emigrate to this country, as they introduce thousands of individuals who might otherwise never have left their countries, to live and work in the United States.

EMPLOYER SANCTIONS WON'T WORK IN AGRICULTURE AS LONG AS GROWERS CAN USE FARM LABOR CONTRACTORS TO EVADE THE LAW

I understand that the growers' position is that while there may not be a shortage of labor now, there would be if there was an effective system for verifying employment authorization combined with effective enforcement of employer sanctions. I remain skeptical that these two conditions will ever be met; in my twenty year experience working with farmworkers I have yet to see any employment law that was effectively enforced in the agricultural setting. The major barrier to the effective enforcement of employer sanctions in agriculture is not the absence of a secure ID card but the pervasive use of farm labor contractors. Since IRCA was enacted, the use of farm labor contractors in agriculture has soared. As Professor Phil Martin has stated, farm labor contractors "are practically a proxy for the employment of undocumented workers and egregious or subtle violations of labor laws" Two researchers at the University of Florida have noted that "labor-intensive agricultural firms, faced with potentially large fines for violation of immigration and labor laws, increasingly modify the organization of their firms by shifting the management of routine seasonal labor jobs to independent farm labor contractors. The use of labor contracting is further intensified because of the effectiveness of labor contractors in the recruitment of illegal aliens." See Leo C. Polopolus and Robert D. Emerson, "Entrepreneurship, Sanctions, and Labor Contracting" *Southern J. of Agri. Econ.* July 1991, 57-68. Other researchers have reached the same conclusions. There are over 10,000 farm labor contractors in the United States with nearly a 20 percent turnover every year. They have proven impossible for DOL to regulate. As long as the grower is allowed to hide behind them, there is little hope that employer sanctions

can be effective in agriculture. Therefore a new guest worker program would not substitute a legal workforce for an illegal workforce as the growers claim, but would simply add to the labor surplus and further worsen the situation of the permanent residents and citizens who comprise the majority of the farm labor workforce in the United States.

U.S. WORKERS ARE AVAILABLE TO FILL ANY SHORTAGE

The growers contend that there are no U.S. workers available to fill the needed jobs if our country gets serious about removing illegal aliens from the workforce. But the overwhelming evidence shows widespread pervasive underemployment and unemployment among farmworkers. If growers need legal workers, they can go to their local Job Service office. Last year, over 70,000 farmworkers registered for work at Job Service offices throughout the nation who were not referred to *any* job. In fact, 44 percent of all farmworker applicants are unable to obtain a job referral through the Job Service. Another 25,000 farm workers were referred to jobs, but not placed in a job. All of these workers were U.S. citizens or legal residents of the United States.

Unemployment appears to be most persistent in the very areas where the growers claim they cannot find a legal work force. For example, in 17 major agricultural labor use counties in California, during the period from December 1986 to the present, unemployment has rarely been less than 10 percent during the peak harvest periods or less than 15 percent during the off-peak months. The total number of rural unemployed in these counties has actually gone up during the last ten years. There are also many unemployed people who are not farmworkers who would be available to do farm work jobs. Last year, the U.S. Employment Service placed almost as many non-farm workers in short term agricultural jobs as it did farmworkers. Over 42,000 non-farmworkers were placed in short-term agricultural jobs through the Job Service. Just as many farmworkers are not being referred to jobs through the Job Service, there is an enormous number of non-farmworker applicants registered with the Job Service who also are not being referred to any job. For example, in Florida, Virginia, North Carolina, and New York—four states which used a significant number of H-2A workers in 1993, there were 1,307,788 non-farmworker job seekers who went without a job referral. While it is probably true that only a small number of these applicants would be interested in a job in seasonal agriculture, all of the H-2A jobs could have been filled by less than one in a hundred of these applicants.

THE GROWERS ALREADY HAVE A FOREIGN WORKER PROGRAM

Finally, the growers' demands for a foreign worker program ignores the fact that there is already one in existence—the H-2A program, a program which is rife with abuses of both domestic and foreign workers. Bad as the H-2A program is, the growers apparently want a program with no protections at all for domestic workers. The H-2A program's requirements are neither burdensome nor unreasonable. For example, housing for H-2A workers generally must meet the minimal standards set by OSHA. A bare room measuring 7 feet by 8 feet with a steel prison bed and mattress, a bare bulb overhead and a concrete floor is all that an H-2A employer need provide. Far from having extensive legal protections, H-2A workers are excluded from the major federal statute which protects U.S. farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act. Any additional costs associated with the use of H-2A workers are more than offset by savings resulting from not having to pay payroll taxes on foreign workers. Growers claim that the H-2A program is unworkable, yet for those who are in the H-2A program, the program has worked all too well; year after year, these growers have had their applications for workers granted by DOL without making any real effort to recruit U.S. workers. Only very rarely are the H-2A employers denied foreign workers. For them, a supposedly temporary solution to a short-term labor shortage has become a permanent way of life.

The Department of Labor administration of the H-2A program has permitted growers to deter U.S. worker job applicants and to unfairly discharge U.S. workers. DOL has also insulted H-2A growers from the private marketplace by permitting inadequate wages and benefits. Finally, DOL has failed to enforce the statutory requirement that growers engage in meaningful recruitment efforts directed at U.S. workers.

THE GROWERS' NEW PROGRAM WOULD RESULT IN A MASSIVE DISPLACEMENT OF U.S. WORKERS

As I understand it the key feature of the growers' proposal is to replace the current labor certification with an attestation procedure similar to that used in the H-1B program. This proposal would cede control of the nation's borders to the industry most responsible for the continued flow of illegal immigrants into this country. Under labor certification, the border gates remain shut until the U.S. government opens them. Under attestation, the employer opens the border gate to foreign workers by promising to meet certain labor conditions, and the border gate remains open until complaints lead the government to close it for that particular employer. Just a month ago, the Senate Subcommittee on immigration heard testimony from the Secretary of Labor and others that the H-1B program which is the model for the growers' proposal is being used to displace U.S. workers on a massive scale. It is apparently permissible under the H-1B program to layoff U.S. workers and then contract with a so-called "body shop" to replace the U.S. workers with lower paid H-1B nonimmigrants. DOL has been unable to effectively enforce the attestation conditions. If the job opportunities and working conditions of skilled U.S. workers such as engineers and programmers cannot be protected under such a scheme, clearly it is inadequate to protect the rights of the most vulnerable American workers.

Under the growers' proposal, no one at DOL would even check to see that the foreign workers were filling jobs for which no U.S. workers could be found or that such workers were being paid the prevailing wage. The only check on the growers' unlimited access to foreign workers would be if a worker filed a complaint. Of course, the foreign workers will be reluctant to file a complaint for fear that they would be blacklisted from future employment in the United States. Enforcement of the attestation conditions would rest totally on the ability of U.S. farmworkers to conduct their own investigations and then convince the Department to take action. Our experience with the Department of Labor acting on farmworker complaints has not been good; DOL takes years to investigate complaints under the H-2A program and has never debarred an employer from the program. Any sanctions that are imposed can easily be evaded through the use of farm labor contractors who will also be allowed to file attestations under the growers' plan. Such a proposal will almost surely result in the displacement of hundreds of thousands of U.S. workers and rampant abuse of the foreign workers' rights similar to what occurred under the Bracero program.

While workers would be admitted for up to ten months for an individual employer, under the growers' plan they could then be transferred to another grower. The so-called temporary workers could thus become virtually permanent "guests." Nevertheless, the growers maintain that their new program will not result in the workers putting down roots in this country, claiming that this is demonstrated by past experience. Nothing could be further from the truth. The past experience with the Bracero program clearly shows that although the Bracero program ended, the Braceros stayed—and so will workers brought in under any new foreign worker program.

The growers are being disingenuous when they argue that their proposal bears no resemblance to the Bracero program. The most significant difference between the Bracero program and the NCAE's current proposal is the almost total lack of any substantive protections for either the U.S. or foreign workers. Both the Braceros and H-2A workers, for example, were guaranteed a written contract, including a guaranteed period of employment, employer provided housing, workers' compensation, and meals at cost. None of these basic protections appear to be part of the NCAE proposal.

CONCLUSION

The fatal flaw shared by all temporary foreign worker programs in agriculture is that the worker is not "free to choose." We all recognize that what keeps working conditions high for most Americans is not federal bureaucrats or even, well-intentioned legal services attorneys, but the ability to go across the street and look for a better job if our present employer does not offer a fair day's pay for a fair day's work. The temporary foreign worker can't do that, and when Congress enacts these programs, it takes away that freedom from Americans too—because now if a U.S. worker is dissatisfied with the terms of employment cooked up by some industry consultant and approved by a DOL bureaucrat, he either must accept them or see the job go to a foreign worker.

Once again, agribusiness is asked to be rewarded for failing to improve its labor practices. While other U.S. employers have tried to comply with the Immigration Reform and Control Act of 1986, agribusiness has continued to rely on a continued

flow of unauthorized workers, even though it was the only industry to benefit from having almost its entire workforce legalized through the SAW program. Instead of improving working conditions as the Commission of Agricultural Workers recommended, agribusiness has sought to evade employer sanctions by increasing its reliance on the labor contracting system with the result that working conditions for farm workers have actually deteriorated since IRCA. Congress and the federal government must also share in the blame for not acting on many of the Commission's other recommendations, including reform of the labor contractor system, the Employment Service, and farmworker housing programs. Despite the recommendations of the Commission, whose members were appointed largely by Ronald Reagan and Senator Thurmond, farmworkers still are denied the basic right to organize and bargain collectively which all other Americans have. Farmworkers still do not have the full protection of unemployment insurance programs comparable to that of other workers in the United States. Farmworkers in many states are not even protected by worker's compensation although farm work is one of the most hazardous occupations.

Like the boy who murdered his parents and pled for sympathy on the grounds that he was an orphan, agribusiness has the chutzpah to argue for yet another foreign worker program based on the facts that the working conditions for its workers are so bad that no American who had any choice would ever take the job and that consequently it has continued to blatantly violate the law against employing illegal immigrants. The clear alternative to a continued reliance on an alien workforce in agriculture, is for Congress to "just say no" and for agribusiness to begin to compete with other employers for a U.S. workforce by finally offering decent wages and working conditions.

RECOMMENDATION

1. The wages of H-2A workers should be subject to FUTA taxes and the employer's share of FICA taxes in order to eliminate the incentive for substitution of foreign workers for U.S. workers.

2. The Migrant and Seasonal Agricultural Workers Protection Act should be amended to include H-2A workers within its protections.

3. The H-2A program should be amended to require employers who use the program to take timely and significant steps designed to recruit and retain U.S. workers in order to remove as quickly as reasonably possible the dependence of the employer on nonimmigrant workers. Such steps should include, but not be limited to, paying higher wage rates than are currently being paid in local area and operating a training program.

NUMBER OF FARMWORKER APPLICANTS REGISTERED WITH JOB SERVICE IN FY 93-94 WHO WERE NOT REFERRED TO ANY JOB

State	Number of unreferred ap- plicants
Texas	19,352
California	14,769
Washington	8,987
Florida	4,880
Puerto Rico	4,296
Michigan	4,091
Arizona	3,376
North Carolina	3,116
Minnesota	2,902
Oregon	2,661
New Mexico	1,193
Idaho	757
Ohio	751
Illinois	618
New York	594
Georgia	526
Pennsylvania	463
Wisconsin	356
Hawaii	343
South Carolina	317
Colorado	270
Virginia	253

NUMBER OF FARMWORKER APPLICANTS REGISTERED WITH JOB SERVICE IN FY 93-94 WHO WERE
NOT REFERRED TO ANY JOB—Continued

State	Number of unreferred ap- plicants
Wyoming	241
Total	75,112

Source: U.S. DOL Employment and Training Administration Migrant Indicators of Compliance, June 1994

Mr. SMITH. Thank you, Mr. Williams. Mr. Grimes.

**STATEMENT OF W.J. GRIMES, FARMER, ON BEHALF OF THE
VIDALIA ONION BUSINESS COUNCIL AND THE GEORGIA AG-
RIBUSINESS COUNCIL**

Mr. GRIMES. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is W.J. Grimes. I am testifying on behalf of the Vidalia Onion Business Council and the Georgia Agribusiness Council. I also have an endorsement from the commissioner of agriculture, the Honorable Tommy Ervin in Atlanta.

I am a lifetime farmer living in Wheeler County. We grow vidalia onions for one thing, it is one of our crops. In the 1994-95 crop year, the vidalia onion crop was worth \$62 million, approximately. This translated into about \$250 million in economic impact. This drives the economy in middle and southeast Georgia.

Like most Georgia growers and processors, I am totally dependent on migrant labor to plant and harvest my crops. For several years, we have felt that migrant workers, that the migrant worker problem was getting out of hand. Although many of the workers are legal, there have been growing signs that illegal workers are spread throughout the industry.

In the spring of this year, many Georgia farmers experienced a series of raids by the Immigration and Naturalization Service. As a whole, the farmers in my area of the country are law-abiding, tax-paying citizens. To be in conflict with Federal law enforcement personnel is not an everyday occurrence and is not something that we enjoy.

The current H-2A agricultural program does not work. The regulatory requirements under the current H-2A have destroyed the program. Farmers must apply 60 days in advance of the date workers are needed. This includes a 40-day search for U.S. workers and then a 20-day advance notice for certification for employment of aliens. The INS is then petitioned for admission of aliens. The employer is totally responsible for recruiting the alien workers and arranging for their admission to the United States and travel to the jobsite.

I am a true family farmer. I have to believe a man or woman's word. If they show me proper documentation, I have to believe them. I do not have the resources to travel to other countries to investigate each and every worker.

Since 1952, the H-2A program has been burdened with an increased amount of regulatory problems. An attempt to repair this regulatory nightmare was made in 1986, but, unfortunately, the in-

tent of that legislation has been twisted to virtually destroy any possibility of the program ever working effectively.

I, along with a committee appointed by the Vidalia Onion Council, have spent a great deal of time trying to come up with a proposal that would work for U.S. farmers in the process. We have also worked with the National Council of Agricultural Employers.

There are several key factors in which Georgia farmers agree. We want to pay fair wages in full in a timely basis to our farmworkers. We want our workers to be on the farm with U.S. legal standing. We do not want to live each day of our life with the threat of Border Patrol agents driving up and shutting down our farm operations. We understand that proper paperwork is critical, and we are willing to do our share, but please remember that we are not large cooperations and do not have the personnel to spend days upon days giving out Government forms.

We like dealing with our employees. Working through labor contractors is not the ideal situation for us. Providing transportation for migrant farmworkers is a necessity, and farmers are willing to do this. Meeting OSHA requirements for field sanitation is not unacceptable. Proper training and handling of chemicals is something we already do for all our workers. As for housing, we support adequate housing for migrant farmworkers, but we do not want a litany of mandates from the Federal Government on how to achieve adequate housing. We also support notice to all potential employees as to conditions of employment and the length of time workers will be needed. We support any simplified method for verifying a worker's credentials. We have to have a dependable source of supply of legal workers if we are to stay in business.

Finally, our goal is not to displace U.S. workers by bringing in guest workers. We will hire any local people that are willing and able to do this work. Anyone who has operated a farm or processing facility in Georgia knows that you cannot function without migrant labor in this day and time. There is not an adequate local labor force to keep our businesses running. There are a variety of reasons local laborers are not lining up for jobs. This is probably not the forum for that discussion, but it should be addressed.

In conclusion, we do not have the perfect solution, but we know the current H-2A program is not working. We are not interested in slight changes in that program. We need radical reform. Even the U.S. Department of Labor employees in the field will tell you that the program is ineffective, and we can't continue to operate under these conditions. If the current immigration bill moves through Congress without an adequate guest worker provision, it could have a devastating effect on the vegetable industry in this country.

I ask you today to establish a guest worker program that will allow us to have a legal supply of labor to continue to operate our farms.

We are proud to have Congressman Bob Barr as a sitting member on this full committee, and appreciate his cooperation on agricultural issues.

I want to thank you, Mr. Chairman, for allowing me to testify, and also Congressman Kingston and Senator Coverdell for their ef-

forts to make sure that we have this opportunity to be here. Thank you.

[The prepared statement of Mr. Grimes follows:]

PREPARED STATEMENT OF W.J. GRIMES, FARMER, ON BEHALF OF THE VIDALIA ONION BUSINESS COUNCIL AND THE GEORGIA AGRIBUSINESS COUNCIL

Mr. Chairman and Members of the Committee, my name is W.J. Grimes. I am testifying on behalf of the Vidalia Onion Business Council and the Georgia Agribusiness Council. I am a lifetime farmer living in Wheeler County, Georgia. My son, my grandson and I own and operate a produce farm. I have seen many changes in farming in the past 50 years but never have I seen things in the shape they are in today concerning labor.

The vidalia onion industry is located in a distinct region of middle and southeast Georgia in the 1994-95 crop year, \$62,486,250.00 of vidalia onions were sold. The economic impact of the 1994-95 vidalia onion crop was approximately \$234,323,437.50. This drives the economy of middle and southeast Georgia.

If one looks at the Georgia food and fiber industry effected by our topic today, the numbers are astounding. Gross farm receipts in Georgia totaled in excess of \$5 billion dollars for the 1994 crop year. This is an impact of \$39.4 billion on our state's economy representing 16% of the Gross State Product and 16% of all Georgia jobs. I bring you this data today to let you know that we are not talking about isolated cases of immigration and agricultural workers problems. This is big business in this country and we have to address what has become a problem bordering on destroying agriculture as we know it.

I am an onion farmer as well as grow other vegetable crops in Helena, Georgia. Like most other Georgia growers and processors, I am totally dependent on migrant labor to plant and harvest my crop.

For several years, we have felt that the migrant worker problem was getting out of hand. Although many of the workers are legal, there have been growing signs that illegal workers are spread throughout the industry. In the spring of this year, many Georgia farmers experienced a series of raids by the Immigration and Naturalization Service. As a whole, the farmers in my area of the country are law-abiding, taxpaying citizens. To be in conflict with federal law enforcement personnel is not an everyday occurrence. I would like to share with you a couple of incidents experienced by Georgia onion growers.

One of the larger growers in our state received a phone call early one Monday morning that there were INS officials at road blocks throughout the county. The farmer's biggest concern was not that illegal workers would be detained but that legal workers would be very intimidated by the INS stops and not come into work that day. One day turned into a week without any workers on the farm. The farmer travelled to the local jail where INS officials had established a large fenced area outside the jail. The farmer viewed many of his workers that he knew had proper documentation. When he attempted to talk with the legal workers in order to clear up their standing, he was told to leave the premises or be arrested. These workers were in this country legally. His estimated crop loss was \$25,000.

Another farmer that runs a large vegetable processing plant had to shut the plant down for over a week, putting many U.S. citizens out of work because there were not enough workers to run the facility.

The current H-2A Agricultural Worker Program does not work. It is my understanding that the number of participants in this program has never been large and has declined in recent years. In 1980, there were approximately 18,000 job opportunities under the program in 1989, 26,000. But by 1994, the number had declined to 17,000. You can compare this to approximately 2.1 million U.S. workers that do hired farm work each year.

The regulatory requirements of the current H-2A have destroyed the program. Farmers must apply 60 days in advance of the date workers are needed. This includes a 40 day search for U.S. workers and then a 20 day advance notice for the certification for employment of aliens. The INS is then petitioned by the farmers for the admission of aliens. The employer is totally responsible for recruiting the alien workers and arranging for their admission to the United States and travel to the job site.

I am a true family farmer. I have to take a man or woman's word. If they show me proper documentation, I have to believe them. I do not have the resources to travel to other countries to investigate each and every worker.

This is very personal to me. I want to tell you about what I have recently experienced. Every one of my workers had proper documentation yet, I want to show you

what a predicament I found myself in earlier this year. Look at these returned social security numbers (hold up documents). As you can see, it is obvious that much of the documentation were forgeries. I am not an exception, I have talked with many growers across the country that have the same problem.

Since 1952, the H-2A program has been burdened with an increasing amount of regulatory problems. An attempt to repair this regulatory nightmare was made in 1986 but unfortunately the intent of that legislation has been twisted to virtually destroy any possibility of the program ever working effectively.

I, along with a Committee appointed by the Vidalia Onion Business Council, have spent a great deal of time trying to come up with a proposal that would work for U.S. farmers and processors. We have also worked with the National Council of Agricultural Employers.

There are several key factors in which Georgia farmers agree. We want to pay fair wages in full, on a timely basis to our farm workers. We want our workers to be on the farm with U.S. legal standing. We do not want to live each day with the threat of border patrol agents driving up and shutting down our farm operations. We understand that proper paperwork is critical and we are willing to do our share but please remember that we are not large corporations and do not have the personnel to spend days upon days filling out government forms.

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Finally, our goal is not to displace U.S. workers by bringing in guest workers. We will hire any local people that are willing and able to do this work. Anyone who has operated a farm or processing facility, in Georgia, knows that you can not function without migrant labor. There is not an adequate local labor force to keep our business running. There are a variety of reasons local laborers are not lining up for jobs. This is probably not the forum for that discussion but it too should be addressed.

In conclusion, we do not have the perfect solution, but we do know the current H-2A program is not working. We are not interested in slight changes in that program. We need radical reform. Even the U.S. Department of Labor employees, in the field, will tell you that the program is ineffective and we can't continue to operate under the current conditions. If the current Immigration Bill moves through Congress without an adequate Guest Worker Provision, it could have a devastating impact on the vegetable industry in this country.

I ask you today to establish an adequate Guest Worker Program that will allow us to have a legal supply of labor to continue to operate our farms.

I want to thank you for allowing me to testify and also Congressmen Kingston, Chambliss and Senator Coverdell for their efforts to make sure that we had this opportunity to be heard.

Mr. SMITH. Thank you, Mr. Grimes.

Mr. Grimes, both you, and particularly Mr. Young, have mentioned problems that you have seen in the H-2A program. Let me say that I agree that it can often be a long and costly and arduous process, and I happen to think that it can be improved and that reforms are needed in the H-2A program.

Ms. Huerta, I just want to make a couple of observations on your comments in regard to average wages paid and undocumented aliens being virtually nonexistent. First of all, it's my personal experience and my strong feeling that the vast majority of growers, of agricultural producers, are law-abiding individuals who do pay minimum wage, if not significantly more. At least my personal experience has been that the average wages are, in fact, much higher than minimum wage.

As far as your finding that there were no illegal aliens, I don't think that you allowed for the high percentage of individuals who use fraudulent documents and who are technically here illegally but they're here—or who are technically eligible, but eligible only because of the fraudulent documents. The estimate, I think, is probably 50 percent, and that's probably pretty close to accurate. Do you disagree with that?

Ms. HUERTA. I violently disagree with that.

Mr. SMITH. You don't have to violently disagree; you can just—

Ms. HUERTA. Yes, I violently disagree.

Mr. SMITH. Strongly disagree.

Ms. HUERTA. Well, strongly disagree, because, first of all, this is what people said when—you know, when we were talking about it back in 1985, this is what the growers were saying, that it's 50 percent of the work force is undocumented. We were saying at that time that it was about 25 percent. OK, so we know that we had all of these people that got the legalization; 1,300,000 people got their legalization during that process, which means that those people were all added to the labor force. Farmworkers, professional farmworkers, this is what they do for a living. They don't just leave the labor force. They stay there. I mean, I've worked with farmworkers for the last 40 years. I know when someone is documented and when they are not. I know when someone is documented and when they're not. And when I say to you that right now in the labor force the vast majority of the workers are citizens or legal residents—now, some of them do go back to Mexico and come back, but they have their residency status. They go—when the season's over, they go, and then they come back again.

Mr. SMITH. What percentage do you think are using fraudulent documents?

Ms. HUERTA. I don't think it's as much as you might think. I really don't—the people who got legalization got that legalization because they were working in the fields. They were working in the farms. These people did not disappear into thin air; they are still out there.

Mr. SMITH. Let me go on to my next question, and I'll accept your answer on that.

Ms. HUERTA. Let me—now, people that might be undocumented might be relatively—

Mr. SMITH. Let me go on to my next question, if I may. My next question is this: if you are a producer or a grower and, for whatever reason, there is a shortage, I don't get the feeling that there are thousands of people waiting around to take those jobs that require individuals to move around with crops and that are back breaking, literally. Where do you find individuals if, for any reason, there is a shortage?

Ms. HUERTA. They are there. They are now only working—they are underemployed. Workers are now only getting half of the work that they used to get before Simpson-Rodino. Before when they would work a job where they had worked for three—in a—I was negotiating a contract just last week with a wine grape grower in Carmine, and those workers said, "Before we had 3 months of work during the harvest. Now the most that we can get is 6 weeks." There are double the number of workers that are hired for the har-

vest at that ranch than what there used to be. People are partially employed as of now. They are not working full time because there are too many people for the jobs. On the——

Mr. SMITH. I'll accept that answer, Ms. Huerta. I want to go on and try to get in as many questions as I can in my 5 minutes. I want to go to Mr. Vice for a minute, if I may.

Mr. Vice, what is the average wage paid among the growers whom you represent?

Mr. VICE. I think the 1994 records show that the average wage paid in agriculture in California——

Mr. SMITH. For the migrant workers, agricultural workers?

Mr. VICE. Agricultural all——

Mr. SMITH. What would it be for migrant workers?

Mr. VICE. I don't know, but I can tell you that you can't get anybody to work in this day and age for minimum wage.

Mr. SMITH. Mr. Williams said that 20,000 individuals in Texas could not obtain jobs when they applied to the job service for agricultural work, and I'm sure the same thing is true in California. We heard earlier today, there was testimony of at least 70,000. Why is that? What is the explanation for why those individuals who go to the job service can't, are not assigned to positions that are needed in the field?

Mr. VICE. Well, I don't know, but I can speculate. First of all, agricultural work is very seasonal work. When was that 70,000? Right at the time when there was nothing being harvested or was that at peak harvest? I think you'll find that ebbs and wanes, but I can tell you that I've had a personal experience to try to recruit workers through the job service, and I've not been very successful. Usually, it's someone that wants to work a day, a day and a half, sometimes not even a full day, and that's all they want to work.

Mr. SMITH. If a shortage should develop in the future, it is obviously going to develop gradually; it's not going to be falling off a cliff. How do you determine when there is a labor shortage?

Mr. VICE. Well, I hope we don't determine after the fact and find we're not able to harvest our crops.

Mr. SMITH. It's obviously gradual. I just wonder what——

Mr. VICE. I think it depends a lot on how the enforcement goes. If the job verification, verification card concept works, and when we start to gear up for harvest this next spring, if we find our workers—we aren't able to get workers with documentation, then the shortage for me begins right then when I can't get enough help.

I don't know how fast that will be, but I want to answer the one question about the shortage. I want to give you a couple of real quick figures if I could. These are two recent tip raids. INS in California just this last quarter, one field with 438 workers on it, INS dismissed 307 out of 438 that were with fraudulent documents. Another with 1,234 workers in the field dismissed 749 they said were fraudulent document workers. So, these aren't our figures; these are INS figures.

Mr. SMITH. Thank you, Mr. Vice. Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman. In some ways both of you are right. A huge number of people, experienced farmworkers, were legalized under the 1986 bill. These were professional farmworkers, people who——

Mr. VICE. Demonstrated farmworkers.

Mr. BERMAN. Demonstrated farmworkers. The extent to which population of those have continued, given this legalization program, and in comparison with the unemployment rates, some figures have been quoted from the job service, and all this other stuff—I want to pin down one thing. I have not heard you say, I have not heard your representatives say in my earlier conversations, that there is now a serious, fundamental shortage of farmworkers.

Mr. VICE. No, I have not said that, and I will not say that.

Mr. BERMAN. I don't know where Coachella Valley is. I mean, I do know where Coachella Valley is, I think. You are a respected leader of the agricultural community, the head of the farm bureau in California, and I think that we should just establish for the record that at the present time there is not a shortage. I don't need to get you to admit that there is a large surplus, but I think that the statistics from the Labor Department would establish that there is a large surplus.

Mr. VICE. And I think, Congressman Berman, there has been time, even in this past year, where it got tight in different regions, but sometimes that's because sometimes the workers aren't where you necessarily want them on the week you want. So there's some of that. But mass shortages, no there's not. We're not concerned about that. We're concerned about what will happen if, indeed, we lose the people who are working there now.

Mr. BERMAN. I understand. I just wanted to get the frame of reference correct. There's always—I bet you for 50 years there's been, in a peak season for a particular person where the harvest came a little earlier than they thought—

Mr. VICE. Absolutely.

Mr. BERMAN [continuing]. There's been a tight moment, no matter how big the surplus is.

Is there a proposal—this is to Mr. Vice or Mr. Young. Is there a proposal that I can look at for this new guest worker or revised H-2A program? Is there something out there that I can put my hands on?

Mr. VICE. I'm aware that there is a draft document, I believe, in the process that will explain from our standpoint what has to be in some kind of a program.

Mr. BERMAN. Let's just talk about a few of these things that should be in it. One, is it the growers' position that they should not pay 14 percent FICA contributions for Social Security and the unemployment insurance for people coming in under a guest worker program?

Mr. VICE. It's not my association's position to not pay that, no.

Mr. BERMAN. It is not?

Mr. VICE. It is not. There is talk about having a fund for that to go in for making sure that money goes back, a fund for people to return, an enticement fund to go back, if that's—

Mr. BERMAN. Question No. 1 for me is, do the growers want a—

Mr. VICE. A break on the wages? No.

Mr. BERMAN. Right. They will be putting in the—they will not be asking for exemptions from FICA and unemployment insurance coverage for such a program?

Mr. VICE. No.

Mr. BERMAN. All right. Secondly—

Mr. VICE. Will we recruit domestically? Yes. And we'll agree—

Mr. BERMAN. All right, I would expect so.

Mr. VICE. We'll pay the prevailing wage. I think that should be part of it.

Mr. BERMAN. So there's going to be a prevailing wage determination. A prevailing wage determination has to be in this particular proposal. Are you going to provide housing?

Mr. VICE. I think that in a lot of cases we can provide houses, and in some cases we'd rather have a housing allowance. It makes no sense for a grower that has high employment needs to build large amounts of housing for 6 weeks. But I think a grower should, and I think our growers will, participate in some way in order to have, to make sure that workers have housing, whether that's a housing allowance or in some cases providing houses, yes.

Mr. Berman, you know me well enough to know that I—and it just bristles me when I hear agriculture thrown into one lump basket, that we're a bunch of crooks and treat our workers bad, because that is not the case. I have—I wish you could talk to some of my farm workers. You'll find out, and there's a lot of farmers like me, you'll find out that my workers think they are paid well, treated well, and always have been. Their children are coming back and working for me.

Mr. BERMAN. This is my point.

Mr. SMITH. Mr. Berman, are you going to be able to come back after these votes? If that's the case, I'd like to let Mr. Gallegly ask his questions before we go vote, and then we will come back in for you and Mr. Becerra, and I may have other questions as well.

Let me say for those who are present, we have at least two votes that will take at least a half an hour, and I would ask this panel to return. We have one more panel after this, and we will continue after the last of the series of votes. Meanwhile, Mr. Gallegly is going to ask his questions.

Mr. GALLEGLY. Thank you very much, Mr. Chairman, and because we do have a vote on, I'll try to make it brief, and I will not take the full five minutes.

Ms. Huerta, I apologize for coming in the middle of your testimony. I was over at the Capitol and wasn't able to get back in time. But I did hear parts of your testimony and your position that the illegal population is not nearly as great as has been estimated by some or what I assume your testimony was, was by everyone that has ever testified on the percentage. You believe that they're all incorrect and overestimated, whether it's Department of Labor, whether it's INS, whether it's the growers, whether it's the labor purveyors. In any event, let me ask you, in your own organization is there a requirement that your members have a legal right to be in the United States?

Ms. HUERTA. Well, the way—

Mr. GALLEGLY. Is there a formal requirement that the members of United Farm Workers have a legal right to be in the United States?

Ms. HUERTA. The way that our union works—and Congressman Berman was the author of the Agriculture Labor Relations Act in the State of California, which is the only State that has allowed—that permits farmworkers to have collective bargaining rights—the way that that law works is that the employers are the ones that hire the workers. We go in and organize the workers. We do not do the hiring.

Mr. GALLEGLY. I understand that. I understand that, and in the interest of time, because I have a couple of quick questions—

Ms. HUERTA. So that is not our—

Mr. GALLEGLY. Just simply, is there a requirement of the United Farm Workers, or do you have a verification process of your own membership that pay dues to your organization that there is a requirement that they have a legal right to be in the United States?

Ms. HUERTA. Well, that is not our responsibility.

Mr. GALLEGLY. In other words—

Ms. HUERTA. But the one thing that we do do is that we do not allow labor contractors, when we sign a contract with the grower, and that immediately locks out I think the use of undocumented workers.

Mr. GALLEGLY. So what you're saying is that it really doesn't make any difference to United Farm Workers whether members of your organization are in this country legally or illegally?

Ms. HUERTA. Well, it does make a difference to us because we also want to follow and abide by the law, the way that everybody should.

Mr. GALLEGLY. Well, I—

Ms. HUERTA. But I do want to say this, though: that we have union contracts with growers, and that's right, they are a lot of real good growers that do follow all the laws. And where we have contracts, there are lists of literally hundreds of workers that are trying to get jobs where we have union contracts because they have decent wages; they have health—

Mr. GALLEGLY. We're getting away from the question.

Ms. HUERTA [continuing]. A health plan; they have a pension plan.

Mr. BECERRA. Will you yield for just—

Mr. GALLEGLY. Yes, but we have a very limited amount of time.

Mr. BECERRA. Very quickly, correct me if I'm wrong, but if you're out there organizing people who are working and if you have to provide documentation that you're eligible or authorized to work, it would—you could assume that if you're out there organizing people to be part of a union, you're organizing people that were found by the employer to be eligible to work. So I think it would be a fair assumption by the union to think if employers are trying to—

Mr. GALLEGLY. I think she's made that point. Let me ask you this: do you, for the record, believe that anyone that is illegally—if it's one person or 350,000, as I believe is the case, and it is the belief of the majority of the people that have any knowledge on this issue. Do you believe if any one person is in this country illegally working in the field, that we should aggressively see that they are

removed and given an opportunity to understand the laws. If they want to come to this country, they have to come legally. Do you believe that they should be removed? Just a simple yes or no, in the interest of time.

Ms. HUERTA. Well, I'm out there every day with farmworkers. So I'm not, you know, I'm not coming from an academic point of view. I've been out there for 40 years working with the farmworker population throughout the United States of America. I believe that the laws of the country should be enforced and I believe they should be enforced equally for workers as for employers.

Mr. GALLEGLY. So you—

Ms. HUERTA. I think the employers should be—they should be sanctioned, and they're not being sanctioned at this point in time.

Mr. GALLEGLY. So then you do advocate—

Ms. HUERTA. They get a slap on the wrist.

Mr. GALLEGLY. Then you advocate a better verification process?

Ms. HUERTA. I advocate the enforcement of the laws, all laws, minimum wage, immigration, et cetera.

Mr. GALLEGLY. But in order to enforce the laws, I would tell the gentlelady it's imperative that we have a verification process or it's impossible. So I would assume that, from your testimony, you do support removing those that are illegally in this country and that we have a verifiable process to see that the people that are using documents are legally here, and if the employers are not abiding by their responsibilities, they should be dealt with accordingly?

Ms. HUERTA. And they should take more responsibility than what they now do.

Mr. GALLEGLY. Thank you very much.

We'll recess the committee for 30 minutes.

[Recess.]

Mr. SMITH. The Immigration Subcommittee will reconvene.

I will ask the panel members to come to their seats and we will finish up with this panel and then move forward.

Before we do so, I want to give Mr. Vice an opportunity to clarify or finish his response to a question that Mr. Berman asked, and then we'll resume formal questioning.

I'm going to ask Congressman Jack Kingston if he would join us up here, if he would like to. He is a friend who is on the panel, and, Jack, we welcome you.

Mr. Vice.

Mr. VICE. Thank you, Mr. Chairman.

I just wanted to clarify one of the statements when Congressman Berman asked me a question about the exemption for FICA and unemployment insurance. I want to make sure that my statement was understood.

I don't believe that farmworkers or the growers are to be excluded from paying that, but since the worker is not going to be eligible for unemployment or Social Security, that money should be used to help defray the cost of the program. So in terms of saying, no, we didn't want an exclusion, not exclusion from having to pay; exclusion from how it's traditionally used, yes; that could be used to defray the program. I just wanted to make sure that I had a chance to chat with you a little bit about that.

Mr. SMITH. Thank you, Mr. Vice.

Mr. BERMAN. Well, you actually said shift to Gallegly, so he could ask questions, and then——

Mr. SMITH. That's correct. Mr. Berman, I do want to say that that shift occurred after the red light went on during your questions. [Laughter.]

Mr. BERMAN. Oh.

Mr. SMITH. However, you'll still have an additional opportunity——

Mr. BERMAN. All right, go ahead, I'll wait until the others——

Mr. SMITH. We'll have another round. First, I want to give our colleague, Mr. Kingston, an opportunity here to welcome a friend.

Mr. KINGSTON. Mr. Chairman and members of the committee, I just wanted to welcome a constituent, Mr. Grimes. I think he's next to speak.

Mr. GRIMES. No, I've already spoken.

Mr. KINGSTON. Well, I appreciate the work of this committee looking into this important issue and realize that today is going to be a part of a long series of work to be done on these issues. I appreciate your leadership, the committee, and letting Mr. Grimes be a part of it.

Mr. SMITH. Thank you, Mr. Kingston. We appreciate that and appreciate your suggesting Mr. Grimes as well.

We have another member here. Mr. Chambliss, would you like to come forward or make any remarks while you're here?

Mr. CHAMBLISS. Mr. Chairman, Mr. Grimes has a farm in my district.

Mr. SMITH. Oh, pardon me. Please join us up here. [Laughter.] We'd like to have you make a couple of remarks if you would.

Mr. GRIMES. I catch it from both ends. [Laughter.]

Mr. SMITH. That's pretty good. Not everybody convinces several Members of Congress that they represent them. [Laughter.]

Mr. CHAMBLISS. I appreciate you all giving Mr. Grimes an opportunity to come up and speak. This is an issue that is very sensitive to me personally because a member of my family is a produce farmer and has a lot of migrant workers that he employs, my son-in-law. As a matter of fact, it is a real critical issue to my district, not only in the area where Mr. Grimes farms, but all over the southern part of my district we have an awful lot of migrant workers. And I'm very much interested in it. I've been following the work that you all have been doing over here and am very appreciative of the effort that you all have put into it, and I look forward to continuing to following the work with you all through this.

Mr. SMITH. Jack, thank you. I appreciate your being here.

Mr. Becerra, I believe you're up for questions.

Mr. BECERRA. Thank you, Mr. Chairman.

Let me thank the panelists for their time and, quite honestly, their patience.

I'd like to see if I can try to get some clarification on some of the points that have been made, and I'd like to hear specifically from Mr. Young and also from Mr. Grimes. Mr. Vice mentioned that it was not, in his opinion, a situation right now where we had a lack of individuals to work in the agricultural area, that we do have an available workforce at the time. Do either of you have an opinion

as to whether there is a shortage of agricultural workers in this country at this time?

Mr. GRIMES. Can I say something? In the Vidalia onion area and in south Georgia we have a labor shortage now. I'm losing crops in the field right now that I can't gather because I can't get enough help to set our onion crop and harvest the crop that's ready all at one time. I know of several farmers in the vidalia onion that's had a hard time getting up enough help to get an onion crop set this year. So the labor shortage is not something that's going to happen; it's here, and at the peak of harvest system it's going to be a lot worse. When the vidalia onion crop gets ready to harvest next year, given the situation of how many people might be illegal or might be scared of Immigration, all in the world that Immigration's got to do is park two cars in the vidalia onion area and leave them parked, and we won't get enough labor to harvest this onion crop. That's just the cold, hard fact.

Mr. BECERRA. Let me ask Mr. Young.

Mr. YOUNG. Traditionally, in New England we have had shortages for the last 33 years. There have been workers certified to be a shortfall for all of those 33 years. We are, through the H-2A program, clearing orders to the surplus States, and they're still not filling the orders.

Mr. VICE. Mr. Becerra, I hope I didn't leave the impression that I'm a labor expert in agriculture all across the Nation, because that certainly is not the truth. I think I can speak with a great deal of knowledge about the situation in California, and that's what I meant to limit my remarks to, what I'm knowledgeable about, and I can speak fairly strongly that at this point we have not had a labor shortage in California.

Mr. BECERRA. Thank you, and I appreciate the response of the three of you because what you're clearly addressing is the specific situation you find in your particular portion of the agricultural industry.

Now let me ask a question to both Mr. Grimes and Mr. Young, since you've identified shortages of workers in your particular areas. Are there people in this country who are U.S. citizens or lawful permanent residents who perhaps are unemployed who could do the work in the fields where you have your farms?

Mr. YOUNG. To date, the employment service has not been successful in recruiting workers in other areas of the country for our jobs. They are cleared to Florida and Texas, which supposedly have huge surpluses, but they have not produced sufficient number. We have had probably more referrals of workers out of the Commonwealth of Puerto Rico, primarily because of its closer proximity to the east coast, where we're using the program, but I think that some of the statistics that you're coming up with showing that there are 70,000 workers who go unrefereed are unreliable in that I personally know that in our case, just in the course of this last season, we had 514 workers referred and only 257 arrived. So that shows that there were—that 250-plus workers did not find a job. But I also know that those same workers in many cases were referred to more than one place, and it doesn't mean that the worker didn't find employment. It just meant that the employment service was not responsible for finding it for him.

Mr. BECERRA. Go ahead, Mr. Grimes.

Mr. GRIMES. Let me tell you my experience with the State employment service. I've placed job orders with them several times in the past, and they always say they're going to get you some help, and sometimes they do, but they've never given me any that was any good. They send me crew leaders, and I explain to them that I've got to have a copy of the I-9's on all the people. I explain to them that I'm going to pay the people myself; they're going to get a company check from me for what they do, and the crew leader is going to get his part on the side. You tell them what's got to be done legally, and he's says, "I'll be back tomorrow," and tomorrow hasn't come yet. For some reason, these people don't come back, a big majority of them, when you tell them that you're going to obey the law and do everything like it's supposed to be done. That's happened to me many times, several times this year.

Go ahead.

Mr. BECERRA. Tell me a little bit—and, Mr. Grimes, please feel free to chime in any time you wish—what are the necessary skills that you need to see in anyone you employ? Now—and let me—let me preface it by saying this. I'm one who does not believe that we have a labor shortage, especially in a low skilled area like agricultural work, but I think you are absolutely correct that in your particular markets you may find that you need someone right away and you can't find them, and you can't wait too long, nor can your fruits or vegetables, or whatever you have.

But it seems to me that there's a disconnect here. We shouldn't have to go abroad to find someone to pick or harvest that crop when we have millions of people in this country who are unemployed who say they want to work. Now unless what we are saying is that all these folks who are unemployed don't wish to work or they don't have the skills, then there's a disconnect here.

And so the question is, what are the skills that you need to see in an individual to be able to work in your fields?

Mr. YOUNG. Well, I think that varies with every single commodity.

Mr. BECERRA. Well, let's take your particular product.

Mr. YOUNG. Well, we primarily are in the apple industry.

Mr. BECERRA. Well, what are the skills—

Mr. YOUNG. And it's either the skills that are used in pruning in the wintertime, in which a person has to know the light density of this tree, where the—the way to keep the canopy of the tree open, take out enough of the wood without taking out too much of the wood, taking out the crops 2 years' crop at a time.

Mr. BECERRA. So knowledge of that fruit—

Mr. YOUNG. Knowledge of it, which is not acquired in a 15-minute or a 2-day training program.

In the harvest, the skills that are needed there are perception, depth, color, size, the ability—the agility to be able to work from a ladder, reaching, picking proper sized fruit with the proper color, and doing it so as to not bruise it, handling it properly, so that when we get it back to the packing shed it meets the quality standards that are necessary.

Mr. BECERRA. In essence, what you are saying is picking an apple before its time is not proper? You don't want someone to pick

an unripe apple; you want them to pick a ripe apple and handle it carefully, so that it's not damaged by the time it gets to the consumers?

Mr. YOUNG. Right, and maintain the color standards that might be necessary.

Mr. BECERRA. Mr. Grimes.

Mr. GRIMES. The qualifications that we need in people to set an onion crop is, if he's smart enough to take one onion plant, just one, and stick in one hole with just a little dirt on it, and then get another onion and put it in the next hole, that's the qualifications that he's got to know how to do.

Mr. BECERRA. Not much?

Mr. GRIMES. I believe most any of us in this room could do that. [Laughter.]

Mr. BERMAN. Excluding some of the people at this——

Mr. GRIMES. Well, excusing some. [Laughter.]

But it's not a matter of not being trained to do it or capable to do it. It's a matter of will power.

Mr. BECERRA. Thank you for that point.

Mr. Vice.

Mr. VICE. I think the No. 1 requirement is a good work ethic, and I think to a large degree that's what we're missing. When we've—our experience has been, when we try to recruit some domestic workers that say they want to work, we find out that what they call work and what I call work are two different things.

We pay 9 cents a pound to pick avocados. When we're size picking, you can pick between a bin and a bin and a quarter, if you're a fairly average worker. That's 680 pounds. When we're strip picking, you can pick two bins. That's pretty high wages. You make \$100 a day. There are people that we have hired of every kind of race and background you could imagine, some of which can pick a bin and some which can't pick 100 pounds, and the reason is that they don't want to go up the ladder very fast and they don't want to come down very fast, and they want to take a break about every time they get a bagful. And they just don't want to work very hard.

I can't have a whole bunch of those people; I'd never get my crop off when I'm picking into a falling market. And so work ethic is where you have to start.

And the second thing is there's a lot of skill involved in agriculture that people do not get credit for, and I want to tell you I would challenge anybody to come out and work at different—Congressman Smith was in California not long ago, and we took him into a couple of operations, and I think you would admit that it required a lot more skill than an awful lot of people thought because you can't climb a 40-foot ladder and start picking fruit when you can only pick 8 ounces or 9-ounce fruit and pick it with a 15-foot pole on a 25-foot ladder, and you're going up and down that ladder, and if you pick the wrong size, if it's a half an ounce smaller, we have to throw the fruit away because it's not eligible for that time of year. So everything's very critical.

So good work ethic and then a certain amount of skill that has to be required by experience. You can't hire somebody to come out and work 2 or 3 days that have never done this because their job has always been cutting celery, and that's the reason someone said

earlier, you know, these people get very specialized. You do not find people that go from picking citrus to going in and cutting lettuce. It just doesn't happen—maybe a few, maybe once in a while, but they require—they acquire a skill which makes them very productive in their line of agricultural work.

A lot of the people who work for me come up and they work that period of time because they can make real good money because they know how to do it, and then they go back to Mexico. They do not go up and pick tomatoes or go up and pick some place else.

And let me just make one other point. You know, we said earlier about I participate, and have for a long time, in both the Agriculture Department and the Labor Department's job verification, where I fill out a form, how many people work for me on the first of each month. I send those in on a quarterly basis. Those people, when I say I had 10 this month, and next week I've got 7, those 3 people are assumed to be unemployed by those records, when reality is they've gone home. They're not unemployed. But on the statistical records you heard earlier, those people are people that were employed last month and all of a sudden they're unemployed. In a lot of cases they're not unemployed at all; they've decided to go home.

Mr. BECERRA. And I know my time has expired, Mr. Chairman, but if I could just make a point. I think what you've stress, Mr. Vice, in his last comment, is I think perhaps the operative part of this hearing. That is that there is not a work shortage; there's a shortage of work ethic in some of the folks that you've gotten that are domestic workers, and it's, I think, a shame that we have to turn, some folks feel we have to turn to foreign workers to fill the void not in the workforce, but in our work ethic.

So where I part from the agricultural industries here—there are people that are available to work. Whether they could do the job and make your business stay profitable, given their labor, is another question, and I think that's where you should get every one of us to support you, because no one should place upon you the burden of having to get a person who doesn't wish to work; yet, wishes to get paid. So that's where I hope we could find some common ground, is making sure that, Mr. Grimes, you don't have to worry about the State Labor Department sending you people who can't do the job or don't want to do it. But instead—

Mr. GRIMES. Don't want to do the job is the problem.

Mr. BECERRA [continuing]. They will send people that understand that in this country there is work; you just have to be willing to do it, and let's avoid bringing in more folks from abroad who, as I think the folks here are testifying, do tremendous work and have a tremendous work ethic, and probably we can learn a lot from these immigrants who are coming to our country and providing this work to this country and putting the food on the tables of those of us who take it for granted, and perhaps we'll find some common ground.

But I really don't believe at this stage that a guest worker program, from everything I've heard, is necessary. What we need is to get those who are here domestically here as citizens to understand that they're not guests in this country; they have a job to work if they want to feed themselves. And if there's a job available, wheth-

er it's in the agricultural industry or in the restaurant industry, they've got to work hard in order to make a living, and you all deserve to be able to get something good out of them for the, hopefully, decent wage that you'll pay them.

Mr. WILLIAMS. May I respond to something Mr. Vice said? I think it's an interesting question: how do U.S. workers acquire those skills? And Mr. Vice's remarks made me think of a farm worker that I've known for many years in Immokalee, FL, a man named Pablo Grimaldo, a citizen of this country and a person who has that work ethic 100 percent. Pablo is a lettuce cutter, and one of the best lettuce cutters in Florida. And I asked him one time, when the growers were trying to bring in H-2 workers in lettuce, I said, "Pablo, how did you and your family pick up these skills?" And he said, "You know, my family was in California and we couldn't get a job, and the bracero program came to an end and the growers had to give us a job." And then I look at that and I see that a whole family has supported itself for 25 years because they got a break when the bracero program came to an end, and I think that's an important point to think about, when you talk about acquiring these skills and the skills needed to do farmwork.

Mr. VICE. I could introduce you to an awful lot of people that came to the bracero program that lived and worked and made their living and their livelihood here, and they're still here, and they think the program was a great program, too. So there's both sides of that.

Mr. SMITH. OK, thank you, Mr. Grimes and Mr. Vice.

I'm going to ask a couple of questions.

What I am very much in favor of is making sure that growers have the workers they need. What I am very much concerned about is temporary guest workers becoming permanent illegal aliens.

Mr. Vice, in your testimony you talked about, and I wrote this down, "an incentive to return home." If you can elaborate on that, and let me preface or add here that I don't see how we can have an incentive to go home when there is such a wage differential between the United States and so many other countries, including our neighbor to the south from whom we obtain so many guest workers. But I'd like for you, if you would, to explain how you provide that incentive to return home to someone who's come up here on a temporary basis to work in the fields.

Mr. VICE. Well, I think one of the ways you do it, and, you know, I'm not creative enough to come up with all the answers, but I can tell you one thing: if we can put a man on the moon and do a lot of those things, we ought to be able to figure out a way to solve this problem. One way we might think about doing it—

Mr. SMITH. We've been saying that about protecting the border for a long time, too—

Mr. VICE. Yes.

Mr. SMITH [continuing]. And we haven't succeeded.

Mr. VICE. And we haven't succeeded in doing that. [Laughter.]

One of the things that I believe will help—Congressman Berman made light of it this morning, but I think if you had some way to make sure that some of that wage went back to the country of origin, it would certainly be one of the enticements to go back home, if that's—

Mr. SMITH. I think that that is perhaps a concern I have. Let's just say that we are talking about the country of Mexico where the wage differential is roughly 10 to 1. Even if you were to withhold half of an individual's wage, they are still making five times as much in the United States as they would make back in their home country, and I don't know if that's a sufficient incentive to return.

And it also seems to me you've got this second problem of fraudulent identification. That individual may well get a family member to use his ID or her ID, may well send back the ID for them to use to pick up whatever money at the bank or office, or wherever it might be.

And so let me just simply end as I began and say I'm sympathetic to the growers because I think they have to have their workers oftentimes on short notice. At the same time, I am concerned about these temporary workers becoming permanent illegal aliens, and that's a dilemma and a quandary that we're not going to answer today, but that is my concern.

I will yield some time to Mr. Becerra or Mr. Berman.

Mr. BECERRA. If you would actually just yield on your time, if I could just comment on what you've said—

Mr. SMITH. I'd be happy to.

Mr. BECERRA. I want to make sure the record is accurate. Mexico's wages for the most part on the average are about 1/10th of what they are in the United States, but we're talking about agricultural wages in this case, and those are much lower than the average U.S. wage. So while—

Mr. BERMAN. The differential is bigger.

Mr. BECERRA. Yes, while it's true that Mexican wages are very low compared to U.S. wages, they are not on the same order as 10 to 1, comparing the agricultural wage in the U.S.—

Mr. SMITH. Do you have any idea what the differential would be?

Mr. BECERRA. No. It's large. It's still very large, but I just want to make sure that we don't leave the impression that it's a 10-to-1 difference of an agricultural wage—

Mr. SMITH. OK.

Mr. BECERRA [continuing]. Because we're talking about all of the wages of the U.S. put together, and that's much higher than the average \$6 an hour wage that you have in the agricultural industry.

Mr. SMITH. OK, thank you.

Mr. Berman.

Mr. BERMAN. If I may differ here, I'll bet for some of the peasant agricultural workers in Mexico that differential is greater than 10 to 1. I understand that in California, the wage rate for agriculture is less than the overall wage, well, we know it is, about \$6 and something cents, a little higher in California than that, but \$6. I'll bet you that differential is greater in agriculture, less in Mexico, not less, because—no professor talked to me; I'm just guessing. [Laughter.]

Mr. SMITH. OK, thank you, Mr. Berman. Do you have another question—is there a comment from the panel?

Mr. BERMAN. Yes, here are the things that really bother me. I mean, I'm just talking to the growers. I would also be interested in hearing a response to some of the points you've made.

There are a lot of growers who are recruiting domestic workers. We talked about some problems with apples. There are a lot of States that aren't using H-2A. There are a lot of people who are doing effective things to get workers.

There's a tendency to move away from direct accountability and reemphasize the farm labor contractor. I like that notion of I want to pay them and I want them working for me, and I'll be accountable for complying with the law, and they'll be accountable to me, and let's get rid of a lot of the middle men. I'd like to see agriculture more ordered on that basis than continued and greater reliance on farm labor contractors.

I'd also like to see why we can't put together a meaningful public/private partnership to do the training, to the extent that there are glitches here; to do the recruitment; to make the employment services more effective, if they need to be; to tie in what we're trying to do here in terms of ending what—I think there is a pretty broad consensus that in some areas there's become a bit of a cultural dependency welfare system, and in the promotion of work. Before we resort to the easiest answer, which is bring in some foreign guest workers, I'd at least like to see a period of time where we try a meaningful alternative to that.

That's why I'm sorry you're introducing this notion at this particular time in our immigration debate. If you came back in 3 or 4 years and we still have these problems, and starting to exacerbate them, there's nothing in Lamar Smith's bill, signed exactly the way it is now, that's going to mean for next season you're going to all of a sudden be boss of 350,000 workers who are not disappearing, and I would like to hear to what extent the representatives of the Farm Workers Union and Florida Rural Legal Services think of how they're seeing growers who are getting their workers, what they're doing.

Ms. HUERTA. I would like to just say that, before the agricultural labor relations law, we had hiring halls in our union. We dispatched workers, 70,000 workers, in all kinds of crops: plums, grapes, citrus, lettuce, you name it, strawberries. We dispatched those workers, and in our contract the employer would let us know—I think we had something in there like 30 days ahead of time when, more or less, they thought, because you never know because of the weather, right, more or less when they thought the crop was going to start. And then they would notify us 48 hours before the crop actually started, 48 hours, and we always provided the workers. I'm talking about dispatching 70,000 workers in the State of California. Now that is more workers than most States have with the exception of Florida and the State of Washington, and it worked, and we were able to get rid of the labor contractors, and the growers did hire the workers directly. And the workers knew when they were being dispatched exactly what wages they were going to earn, how many hours they were going to work, and who they were working for, which is what they do not know when they're working with labor contractors.

So we can't say that it can't happen. It can happen. And when Jerry Brown was the Governor of the State of California, he set up a farm labor recruitment system where the offices opened up at 4 o'clock in the morning and there were trailers out there in some

of these rural areas that are hard to get to, where workers knew that they could go to find jobs, and the employers knew that they could put in a work order and get workers. I mean, it's no accident that there are no H-2A workers in the State of California, which is a State that has the largest numbers of workers in the whole United States of America——

Mr. SMITH. Ms. Huerta, I think I understand——

Ms. HUERTA [continuing]. Because of our organization.

Mr. SMITH [continuing]. What you're saying, and let me interrupt my friend just for a minute. But suppose you were a grower in California. Your farm is 30 miles from the nearest town, and if you didn't have the labor contractors, how are you going to guarantee that 170 people show up tomorrow morning to pick a perishable crop?

Ms. HUERTA. Mr. Smith, all of the farms in California are 30 miles from the nearest town. Some of them are 70 miles, some of them are 100 miles. I mean, you know—I mean, workers know this. Workers know this. You know, they know—the night before they're told, you're going to be working in such and such a place, you know, and they report there to that place.

Mr. SMITH. The workers may know it, but, believe me, if I were a producer, I'd be scared to death that they may not show up and I may lose my entire crop. It just seems to me it's awfully happenstance. Maybe it's a phenomenon that I clearly don't understand.

Ms. HUERTA. It's lack of organization.

Mr. SMITH. But it just seems to me that there are practical problems with relying upon migrant workers, if you don't have some kind of a mechanism to guarantee that they're all going to show up at one time when needed. Now that's just my view.

By the way, I have to say that it came as a shock to me that all these fruit and vegetables are not produced in California. Today we hear that strawberries are grown in Norway; onions in Georgia. I thought that everything came from California, but——

Mr. BECERRA. Almost all.

Mr. BERMAN. Just the nuts.

Mr. SMITH. Oh, Mr. Berman says, "just the nuts." Well, 99 percent of the nuts, I suspect. [Laughter.]

Yes, Mr. Becerra.

Mr. BECERRA. Let me ask—I'd like to ask a question on the H-2A program, but before I do, let me echo what Mr. Berman said. We have a welfare bill working its way through this House of Representatives—in fact, in Congress—which is going to drive a lot of folks, mostly women with children, off of welfare. There is a training component in that welfare bill that I think is woefully inadequate, and what we're going to find is some type of restriction on people, women, staying on welfare for anything beyond 2 years. I find that a lot of folks, mostly women with children, will neither be on welfare nor have a job, nor have the skills or the education to get a job. I don't doubt that at some point, if it becomes a case that we truly wish to reform welfare and not just kick people off the roll, that we're going to start talking about some serious training. I wouldn't be surprised if we're going to be talking about individuals, again mostly women, with low skills, already adults, that talk of low-skill labor will be something that they may be trapped

into for training. I wouldn't be surprised as well to see that one of those areas becomes agriculture, if, in fact, the industry continues to say that there might be a need for a guest worker program; the guests that you get may be the folks that are leaving welfare.

If that's the case—and I don't know if I'll pose this much as a question, maybe a comment, something for you to consider—I would think that it would behoove anyone in agriculture, representatives of the growers and representatives of the workers, to know that there may be individuals out there who may be candidates for training to do the work in the field rather than import people from abroad to do the same work. I think the question will be: what skills do they need; how long will it take to acquire them? But, more importantly, I think the question of whether the ethic will be there to perform the work in 110 degree weather or the humidity of the South or coming out physically with terrible back pains or hands that are completely chewed apart with vines, and so forth. That's going to test, I think, Americans' gumption for hard work, but I think that's something we should all consider.

But I wanted to ask a question with regard to the H-2A program. And, again, I'm going to reveal my lack of sympathy for the industry's position that we need to bring in guest workers when I see so many people who are unemployed. If you can be specific, any of you who represent either your own farm or the industry, tell me what about the H-2A program makes it unworkable. I mean, I'd like to dissect it a bit.

You need a mike, Mr. Grimes. You need a mike.

Mr. GRIMES. There's a provision in the H-2A program that says if you got, let's just say, 100 workers you bring in, get an H-2A worker, you pay the expense and all this kind of stuff, you give them a contract. You get started. Ten days later, 15 days later, into your contract, up to 50 percent of it, you have a crew leader out of California or out of Georgia, anywhere, all of sudden says I've got 100 documented workers; I want this job. You've got to roll that 100 people that you brought in here; they came in in good faith to work. You've got to take this crew of people and put them on under the same conditions that you've got to do with the H-2A people. So you're stuck with two crews. You've got to pay this H-2A crew for 50 percent of that contract that you agreed to. We can't live with that today; our financial situation won't allow it.

Mr. BECERRA. OK, now, Mr. Grimes, let me—I know the provisions you speak of, but I read them differently. What I understand to be the case is that, in order to first get those foreign workers to come in and work your field, you have to have made an effort to show—

Mr. GRIMES. Right.

Mr. BECERRA [continuing]. That there were no workers available.

Mr. GRIMES. Right.

Mr. BECERRA. If, in fact, some U.S.-based workers, American citizens or lawful permanent residents, are available and willing to do the work, you must then offer them that job, which is the philosophy of this country, to not to deny a U.S. worker a job to give it to someone from abroad. Your responsibility at that point becomes to ensure that that foreign guest worker gets at least, the H-2A worker gets at least 50 percent of what had been promised in the

contract, because obviously they have come from abroad to do the work and they will have expenses as well. But I know nowhere in the law where it says that you must now pay both the H-2A worker that's being displaced and the American worker who's taking that job.

Mr. GRIMES. I spent, me and some other growers spent, three and a half hours a few weeks ago with State and Federal labor people explaining the program to us, and that's what they told us. If someone else walks up after you've done all this advertising and you've got 10 local workers, and whatever, that wanted the job, up to 50 percent of that contract, if somebody else walks up, you've got to roll these people and give them the job, and it don't have to be local people; it can be a crew leader with foreign people——

Mr. BECERRA. Mr. Grimes, do us——

Mr. GRIMES [continuing]. And not necessarily legal people.

Mr. BECERRA. Mr. Grimes, do us this favor: get us the names of those individuals from those departments that are telling you this because there's no way that you should be paying two workers to do one job. You have obligations under the H-2A program because you've certified that no one was out there to do the work. So there are some expenses if, in fact, there are people, but if someone's telling you that you have to now pay these workers that were imported when there are domestic workers that could do it, somebody's playing with you, and you should be more than—feel free to come to some of us. Now, I think most of us would be more than willing to make some calls on your behalf to find out why you're being charged twice, and you should not be.

Mr. Young.

Mr. YOUNG. Mr. Congressman, the biggest problem that we have, and I handled in excess of 300 certifications this year, is a government bureaucracy that does not respond.

Mr. BECERRA. How so?

Mr. YOUNG. How so? It shuts down from Friday to Tuesday on Labor Day; it shuts down over the Fourth of July, and crops don't shut down; they continue to grow and ripen.

Mr. BECERRA. Tell me if I'm correct in this. You have to submit your request for an H-2A worker approximately 60 days before you anticipate the need for that worker; correct?

Mr. YOUNG. That's correct.

Mr. BECERRA. OK. Within 7 days of the application having been submitted to the Department, the Department must tell you if there are any deficiencies in that application. If they don't, the Department has waived any opportunity to say that your application is deficient; correct?

Mr. YOUNG. Deficient in its content only.

Mr. BECERRA. Correct, right. Not that you've been granted the workers, but that your application has some deficiencies. It has problems in it which will not allow the Department to finish the processing and decisionmaking; correct?

Mr. YOUNG. As a matter of fact, they cannot by regulation put it into interstate clearance until they have made that decision and done that.

Mr. BECERRA. But they have 7 days from the date they actually get it to make that decision. After the 7th day, by day 8, if they

haven't told you you've got some problems here, you didn't dot those "i's," they can't raise that concern later on; correct?

Mr. YOUNG. That does not say—tell me how many workers I'm going to have at 20 days.

Mr. BECERRA. Understood. Understood, but at least in terms of your application, which is supposed to be submitted 60 days before you have the need for these workers, you're going to know by day 53, "T minus day 53," whether you have an application that's properly before the Department?

Mr. YOUNG. Correct.

Mr. BECERRA. So you still have 53 days before you've said you need these workers. As I understand it now, within—is it 20 days after the request has been made to the Department, it must get back to you on whether you're going to get your workers?

Mr. YOUNG. It needs—must be certified on the 20th day, which—

Mr. BECERRA. Before you need—

Mr. YOUNG [continuing]. Quite often happens to land on a Friday. In the typical scenario with a regional office, mail quite often does not even get out of their mailroom until Monday. But even if it does get out, I don't have it, even by overnight, because of the Saturday-Sunday involved, until Monday. So I have lost the day that it was certified, Friday, Saturday, Sunday. I get it to go out of my office on Monday by overnight to the Immigration Service.

Mr. BECERRA. But let me—

Mr. SMITH. Would my colleague from California yield just for a minute?

Mr. BECERRA. Yes, of course.

Mr. SMITH. This is a good line of questioning. In fact, one of the purposes of today's hearing was to determine whether the H-2A program works or not. So I don't mind spending a little bit of time here. Mr. Young, it seems to me that the minimum amount of time for the H-2A application to be considered and approved is—I was going to ask you—something like 30 days, 7 days, 20 days? Add up all these various time periods, and it seems to me that you're talking about a fairly long period of time before a guest worker could ever be approved to do the work, or is that not the case? I don't have a real feel for all the time, all the deadlines, all the time frames. What's—

Mr. YOUNG. Well, the bottom line is that the Department of Labor will not certify more than 20 days prior to the date of need.

Mr. SMITH. OK.

Mr. YOUNG. If there's a weekend involved that is like Labor Day—

Mr. SMITH. What's the minimum amount of days that it would take to get a worker certified?

Mr. YOUNG. The minimum amount of days that is required to get the certification is 20, but I have to get through the second step. I have to get through Immigration after that, and that can take anywhere from 7 to 21 days.

Mr. SMITH. Now I'll yield back. That's my point: there's a considerable amount of time that is going to unavoidably pass before that worker is ever going to be able to pick one grape, and that's, I think, part of the problem with the H-2A program.

Thanks for yielding.

Mr. BECERRA. Now, Mr. Chairman, I want to get a sense of that because I don't want bureaucracy to blind me to what seems to be on paper a workable process, and that's why I'm trying to get from you who have to go through it—I don't have to; I don't employ individuals that work in the field. So I can't tell you the experiences you have. So what interests me is to find out what about H-2A doesn't work because I look at it and it says 60 days. Fully 2 months before you're going to need these workers, you get—you submit that application, and within 7 days at least you know one thing for sure: the Department cannot knock out your application and say you've got to do it all over again because you've got some deficiencies.

Mr. YOUNG. That is not true because I know that my application has been accepted. I have a grower in Connecticut this last year whose application was accepted. There were 80 workers referred to that grower, half of his workforce. The certification was cut at 20 days. Four days down the road that list of workers was cut. I had to go in for a redetermination and another certification, setting another setback. I have to apply to get certification for the workers that were denied.

Mr. BECERRA. Why were they denied?

Mr. YOUNG. They were denied because the list of workers said that they were interested in the jobs, and further down the road they decided they were not. So we started with a second set of papers now in a short period of time frame.

Mr. BECERRA. Let me stop you there now. That's not the fault of the Department, though; right?

Mr. YOUNG. The Department is the one who recruited the workers.

Mr. BECERRA. The Department recruited the workers for you? In other words, you established——

Mr. YOUNG. That's right; they were recruited through the Interstate Employment Recruitment Service.

Mr. BECERRA. OK. And the notice came to you that you had some workers, the Department had found some workers, domestic workers?

Mr. YOUNG. Yes.

Mr. BECERRA. And that was—that notice was given to you when?

Mr. YOUNG. That notice was given to us the day before certification, which would have been 21 days out.

Mr. BECERRA. Twenty-one days, OK. And——

Mr. YOUNG. At this point the crop was, you know——

Mr. BECERRA. Getting very close?

Mr. YOUNG. Yes.

Mr. BECERRA. Getting very close, OK. They found—they say they found you some workers. Ultimately, a good portion of those workers decided not to show up. You had to reapply all over again for new certification?

Mr. YOUNG. I had to apply for a redetermination of the workers that had been decertified.

Mr. BECERRA. Explain that to me.

Mr. YOUNG. In the case, the numbers were—I don't have the exact numbers; I can provide them to you. As a matter of fact, I

think it's in my written testimony. The workers, half of the work force was denied because workers were available. These are the statistics of workers that are out there that are denied jobs. They decided they did not want to come. That ultimately said that I had to then go back in and get those jobs redetermined. I could put a piece of paper into the Department of Labor; they have 72 hours to act on it and tell me whether I am redetermined.

Mr. BECERRA. OK.

Mr. YOUNG. Now I get this set of papers physically. Every one of these things has to be an original that has to go through the process.

Mr. BECERRA. Understood.

Mr. YOUNG. They arrive at my place; I put them in an overnight, send those to INS.

Mr. BECERRA. So you're now getting very close to your time of launch when you have to have the workers? But now it still seems to me, and I don't want to pass this judgment easily, but it still seems to me that at least 2 weeks prior to the date that you said you would need workers you were certified with the workers that you would need.

Mr. YOUNG. No, sir.

Mr. BECERRA. No?

Mr. YOUNG. Because when we got 5 days before the date of need the list was cut again.

Mr. BECERRA. Let's do this because, Mr. Chairman, I know I'm taking a lot of time: I'd be very interested in this case because I think there, if, in fact, that is happening, you are pointing out a case of bureaucracy which is making it impossible for you to function.

Mr. YOUNG. It is a part of my written testimony, sir.

Mr. BECERRA. I'll take a look at it. I didn't have the testimony before today. So I'll take a look at it, and perhaps we can follow up because it seems that, if that's going on and if it's getting to the point where you're getting to the point of what I call launch, you need your workers, maybe that's something that needs to be addressed in the H-2A program, but my understanding of it, the way it works, it's structured so that the employer has adequate time to fill the need before the date of need arrives. So I'd be very interested in perhaps having a chance to follow up, or maybe the committee following up, to find out, because if that's a bureaucratic problem, I think that certainly needs to be addressed.

And I apologize, Mr. Chairman, for the time, but I think Mr. Young was pointing something out that may be worth exploring.

Mr. SMITH. Thank you, Mr. Becerra.

Let me thank the panelists for being here. We kept you a long time, but it was worthwhile, and we appreciate your making the effort to be here today.

Let me ask panel four to come forward: Mark Schacht, executive director, California Rural Legal Assistance Foundation; Bruce Goldstein, attorney, Farmworker Justice Fund; James S. Holt, senior economist at McGuiness & Williams; Bill Maltsberger, a rancher from Texas; and Linda Diane Mull, executive director, Association of Farmworker Opportunity Programs.

**STATEMENT OF MARK S. SCHACHT, EXECUTIVE DIRECTOR,
CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION**

Mr. SCHACHT. Good afternoon, Chairman and members. Mark Schacht—

Mr. SMITH. Mr. Schacht, please proceed.

Mr. SCHACHT [continuing]. Representing California Rural Legal Assistance Foundation. We're a nonprofit, public interest law firm that's been representing farmworkers in California for 15 years at no cost to them. I should point out at this point that we receive no funds from the Federal Legal Services Corporation.

Sitting before you today, I'm reminded of the last time I was here, about 10 years ago, to testify on the same subject, and the cast of Congressmen has changed, but the "stick-to-it-iveness" and the willingness to sit through hours of testimony of the subcommittee chairman hasn't changed. [Laughter.]

We appreciate your effort to try and get some real answers to problems which don't seem to go away and seem, in fact, to be framed and expressed in the same kinds of terms in roughly 10-year cycles. And before I came back this time, I thought I would take a look at some of the past proposals made by agricultural employers as well as the current proposal made by the NCAE, and I found some striking similarities across the years, across the policy arguments, and I'd like to focus on three of those similarities and their impact on California.

First, all of these programs tend to eliminate or weaken gravely the labor certification process of the Department of Labor. This committee knows that what we're essentially talking about is a precertification test of the labor market. Adoption of a proposal to eliminate the actual test in favor of self-attestation is going to have profound effects in a State like California where there are, according to the latest unemployment insurance statistics, a million workers showing work records in agriculture.

What I'd like to do at this point is, first, and I ask that my full statement be included in the record, including the attachment, is to then refer you to the last page of that attachment, graph No. 20. Graph No. 20 shows for the 17 primary agricultural counties in California, for the months and years since IRCA, the actual unemployment statistics by number for each of those years. And you can see that the actual number in the last 5 years hovers around 300,000 people, and there are a number of points that ought to be considered by policymakers when they reflect on this huge army of unemployed in rural California.

First, these numbers understate the actual number because they don't include discouraged workers; they don't include others who don't qualify for unemployment because they have an insufficient attachment to the labor market or they make an insufficient amount of wages. But these latter workers, these part-time and seasonal workers, are a huge reservoir in the agricultural labor force, and they deserve to be noted.

Second, the unemployed in these 17 rural counties are unemployed precisely in the counties where agriculture is and has been the largest employer and where most agricultural production occurs in California. This isn't unemployment in Sacramento; this isn't unemployment in L.A., where you have to drive 200 miles to

find ag work; this is unemployment in Fresno County, in Tulare County, in Kings County, in Merced County, in Modesto.

Third, these are legal workers. They are not undocumented workers.

Fourth, these unemployed numbers are for the same counties where the largest numbers of SAW's that were legalized in 1986 reside. These are the counties with the largest growth in Latino population over the last decade, and you should know that Latinos significantly lag whites in educational and income attainment in this State and in these particular counties, and they're predominantly people with blue-collar income level and background, and that's largely in agriculture and the related industries.

And, sixth, these growing Latino populations are among the poorest in the State, the highest levels of underemployment as well as unemployment.

And, finally, I think, the numbers don't show, as Mr. Becerra indicated, the number of individuals on Federal, State, and county public assistance programs. So those things need to be borne in mind.

Second, quickly, a second common feature of these programs is that they either eliminate or gravely weaken the adverse effect wage rate. We've heard a lot of talk about the prevailing wage rate. Well, the prevailing wage rate is the bracero wage rate. The prevailing wage rate is the Wilson amendment wage rate. In fact, I'd commend to you Senator Simpson's comments on the Senate floor with respect to the final passage of the Wilson amendment on Senate bill 1200. I think it's worth looking at that.

As the committee knows, the "AEWR" is the rate above the prevailing rate that the Government can set to ensure that there's no depressing effect. Growers are telling you that 50 percent of the labor force is undocumented. It follows from that that there's a huge depressant effect already in wages in the labor market, and if all you do is peg the wage rate to the prevailing rate, you're, in effect, locking in that depressed labor market effect.

Mr. SMITH. Mr. Schacht, you can't see it, but I'm afraid your time has expired. The red light is on the other side of all those files. I don't know who brought that visual aid here, but those are substantial files. Could you conclude?

Mr. SCHACHT. One minute?

The final feature is housing. All of these programs either tend to eliminate the grower's obligation to provide housing or to provide a housing voucher. In California, you need to know over the last 10 to 20 years growers have gotten out of the business of housing. Workers are housed in chicken coops, treehouses, camper shells, abandoned cars, sleep in fields. That's the housing that's available. If you include a housing voucher, there's a new class of housing contractors who will arrive who will meet the buses when they come up from Calexico, and the workers will hand those housing vouchers to a new breed of housing contractor, and the next thing they'll find out is that they're out somewhere in rural Tulare County in a garage with 50 workers to the garage. You won't hear about that because DOL's proactive enforcement role has essentially been gutted in these proposals as well. You're next likely to see it splashed across the front page of *Uno Mas Ono*, and there will be

an entirely new foreign policy dimension to the whole problem of guest workers in California.

[The prepared statement of Mr. Schacht follows:]

PREPARED STATEMENT OF MARK S. SCHACHT, EXECUTIVE DIRECTOR, CALIFORNIA
RURAL LEGAL ASSISTANCE FOUNDATION

Mr. Chairman and members, the CRLA Foundation appreciates an opportunity to testify before you on an issue that has major significance for our farm worker clients, their families and the communities in which they live. Because past and current guest worker programs have been manipulated to both displace U.S. workers and abuse our foreign "guests," the CRLA Foundation opposes any new temporary worker program for agriculture or any substantive changes to the current H-2A program that would facilitate its expansion in California or elsewhere.

Sitting before you today, I'm reminded that I was last here ten years ago to give testimony before this subcommittee on a prior guest worker proposal of agricultural employers.

Before coming this time, I reviewed some of those proposals and compared them to the current NCAE proposal that's been circulated in recent months. I must say I'm struck by one telling fact: Regardless of which particular public policy arguments were advanced on their behalf at the time, all of these proposals have a number of substantial similarities.

In my testimony I'd like to focus on three of those common features, particularly as they might relate to future operation of a guest worker program in California.

I. LABOR MARKET CERTIFICATION

First, all these proposals have either eliminated or tended to greatly weaken the labor certification now required as a precondition to admission of foreign guest workers under the H-2A program.

Adoption of a proposal to eliminate the actual pre-certification market test of the availability of U.S. workers through the U.S. Department of Labor is one of the linchpins of growers' efforts to effect a substantial expansion of the current program.

As noted by others, the latest grower proposal substitutes a self "attestation" procedure that entirely dispenses with this critical labor market test function, and the state where this change is likely to have the most dramatic negative effects is California. It is in California where nearly 1 million individuals earn wages in agricultural employment each year, and where, as others have pointed out, unemployment in the major agricultural counties has been staggeringly high for more than a decade.

At this point, Mr. Chairman and Members, I'd like to direct you to the attachment to my testimony, which is a county by county study of those official unemployment rates which CRLA published this past May, and which we circulated at that time to members of this Subcommittee, its Senate counterpart, and the Jordan Commission.

In particular, I'd like to draw your attention to just one chart in that report, Chart No. 20, which is at the very back. It shows that in terms of absolute numbers, unemployment in those 17 counties over the past 5 years has hovered around 30,000 people.

There are a number of points that should be considered by policy makers when they reflect on this huge army of unemployed in rural California. First, these numbers understate the actual number of unemployed by an unknown, but significant, dimension because they don't include discouraged workers and others who do not qualify for unemployment insurance based on attachment to the labor force or amount of wages earned. These latter workers make up a big reserve of part-time and seasonal workers for agriculture in an average year and so their presence in the labor market should be noted. Second, the unemployed in these 17 rural counties are unemployed in precisely the counties where agriculture is and has been the largest employer, and where most agricultural production occurs in California. Third, these are legal workers, not undocumented workers. Fourth, these unemployment numbers are for the very counties where the largest numbers of SAWs legalized in 1986 still reside. Fifth, these counties are the very counties where growth in the Latino population has been among the highest in the state. Latinos significantly lag whites in educational attainment and income. In these counties, they are predominantly blue collar workers with a background in agriculture or related industries. Sixth, the growing Latino populations of these counties' rural cities and towns are among the poorest in the state, and the pressure to provide for their family by taking work, any work, is intense. Make no mistake, it is the strong work

ethic of Latino farm workers that undergrids the productivity of this industry. Seventh, these numbers do not show the number of individuals on federal, state or county general assistance programs, who make up another potential pool of available workers for the low skill jobs in agriculture intended for foreign guest workers.

2. ADVERSE EFFECT WAGE RATE

Another common feature of these grower guest worker proposals is that they all eliminate or substantially weaken the requirement that employers seeking guest workers provide a special wage that the U.S. DOL has determined does not "adversely affect" the wages and working conditions of similarly situated U.S. workers (the "AEWR").

The AEWR, as this Committee well knows, is annually adjusted by the U.S. DOL to insure that employers seeking guest workers do not get them on the cheap. U.S. policy has been to try to insure, through annual review (and upward adjustment) of the AEWR if necessary, that employment of foreign workers does not depress wages in the jobs or occupations in which alien guest workers are employed. If that were to occur, then U.S. workers would be unlikely to seek or accept such jobs, and the growers would be free to freeze or even lower wages in the future, certain that 3rd World guest workers would still find them attractive while U.S. workers wouldn't.

Thus, it comes as no surprise whatever that the current grower proposal abandons the AEWR process completely. Instead, it provides that the grower must only pay the "prevailing wage." This formula not only insures that the wage set by growers will not be ever adjusted upward by a government authority like U.S. DOL, but also, and just as importantly, that future wage rates that are required will be significantly affected by a labor market increasingly dominated by foreign guest workers, one where growers are free to lower "prevailing wages" if they choose.

3. DIMINUTION OF FOREIGN WORKER PROTECTIONS: E.G., EMPLOYER-PROVIDED HOUSING

A third feature shared by these programs is that they all water down existing statutory or regulatory protections of workers. Usually, these changes are justified on the grounds that they "streamline" the program or reduce bureaucratic bottlenecks.

One of the major targets over the years has been the requirement that, as a condition of being approved to import guest workers, the employer must provide housing that meets bare OSHA minimum standards.

The current grower proposal pointedly omits any requirement that employers provide housing for their "guests," and for those of us from California this too comes as no surprise. For more than half a century, housing for agricultural workers has been scarce and getting scarcer. Urban growth in the Central Valley has only further tightened the low to moderate income housing market. In addition, agricultural employers have made little effort to expand these shrinking opportunities, indeed much of the evidence is that there's been a shift away from providing housing for workers.

The results have been as you might predict. Farm labor housing stock has plummeted, housing that exists has deteriorated because of incredible levels of overcrowding, and large areas of the state have been turned into what a recent official called "unincorporated labor camps."

In fact, rural county housing authorities in California periodically publish housing condition surveys which report that as much as 50% of the season farm worker population is sheltered in what is officially termed "substandard" housing. This type of housing is defined to include: garages, abandoned camper shells, tree houses, beneath highway underpasses, and sleeping in cars, station wagons, vans and in the fields.

4. WHAT A GUEST WORKER PROGRAM WITH THESE FEATURES MEANS FOR CALIFORNIA

I'd like to conclude by outlining what a guest worker program with all of these features would mean for California.

We would first be likely to see the industry's lawyers' handiwork emerge through the creation of a number of new grower associations, which in reality would most likely be asset-less corporate shells that would seek attestations for thousands of workers in dozens of crops. These entities would arise in all the major production areas and cover many, if not all, of the 250 crops produced in our state.

When needed, fleets of buses and vans would be dispatched to U.S. ports of entry in Imperial and San Diego counties on the Mexican border. Guest workers would be hand-picked on the Mexican side by agents of the associations. They would be

chosen on the basis of their youth, hardiness, and for their willingness to take the jobs offered, and not complain. It is very likely that workers with a union background, here or in Mexico, or significant prior work experience in the U.S. would be carefully scrutinized before being accepted. Many workers will also have been recruited from deep within Mexico by other agents of the growers. Like current growers in North Carolina using the H-2A program, it is likely that recruiters will seek out impoverished Mexican Indians who speak little Spanish, are largely illiterate, and have no traditions of supporting labor unions of getting help from legal services lawyers or other government entities.

If this committee rejects a housing requirement, or accept in lieu of that a housing voucher program, then the next step in the process for the workers will occur when the buses arrive and they hand their vouchers to a new breed of housing contractor that is sure to arise to handle this new lucrative business. They will be taken to rural Fresno or Tulare county, for example, where they will be housed in the cheap dwellings that the contractors can get away with. Don't be surprised when local and state media do exposes of the horrible conditions endured by our "guests" under a new guest labor program now sanctioned and run by the U.S. government.

Growers will set the wages that these workers will be paid in between harvests. There will be secret meetings where growers participating in the program will bargain together and determine the wages and working conditions that are to be the "prevailing rates" the next year. There will be tremendous downward pressure on wages, because California agriculture is rapidly expanding its labor intensive crop acreage, and, later, when surveys are done of the new prevailing wages, don't be surprised when you learn that they are stagnant or actually decreasing throughout the industry.

The new program will also abandon U.S. DOL proactive enforcement. Since you're no doubt aware from the collateral lobbying being done up here to eliminate migrant legal services programs and legal services generally, you should expect that few worker complaints of abuse will arise. Those that do are likely to have a new foreign policy dimension: Because it will be the Mexican counsel generals in the U.S. or Mexican labor officials at home who hear of the wretched conditions in the north. The first you'll hear of them will be likely when the stories of a new slavery in the U.S. are splashed across the front pages of *Uno Mas Ono* or another of the major Mexican daily newspapers.

I expect this is starting to sound familiar so I'll draw to a close. What I've been describing has already happened once: it's the war time Bracero Program that lasted until 1964.

California agriculture wants to recreate it by another name because its policy position now, as before, is being driven by what have to be called the worst elements in the industry: those that hire and exploit undocumented workers; those who illegally cut costs now by knowingly using unscrupulous farm labor contractors; those who are expanding into labor intensive crops to chase the quick buck, but who aren't sufficiently capitalized to be in business in the first place and need to cut every corner they can to survive.

Once again, they're seeking a disposable labor force, the same one they've had all this century, the one which immigration reform threatens.

Letting agriculture bring in a temporary guest worker program into rural California will allow it to dispose of a large portion of its existing legal labor force, allow it to consign to perpetual impoverishment one that has been displaced by hired undocumented workers over the last decade and is currently unemployed and underemployed there, and, most importantly, it will allow agriculture to stay on a labor replacement treadmill that lets it discard its workers at will without a thought about wider social costs or even simple human decency.

Congress should finally say "No."

— ATTACHMENT —

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JOSE PADILLA
Director

JOBLESSNESS IN THE CALIFORNIA HEARTLAND: The Labor Surplus Case Against Importation of Agricultural Guestworkers

May 1995

Mark S. Schacht
CRLA Sacramento

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EXECUTIVE SUMMARY

INTRODUCTION

This is the first in a series of reports CRLA will send to key policy makers to address some of the factual and policy issues surrounding existing and proposed agricultural guest worker programs.

We are undertaking this task on behalf of our farm worker clients who fear job displacement and impoverishment if foreign guest workers are admitted to the United States. They believe, as we do, that California growers seeking guest workers will find a myriad of ways to avoid hiring from the large, existing pool of domestic, legal, farm workers that is present in rural counties in our state. The specific purpose of this report is to try to provide some basic information about the adequacy of the existing labor supply in California.

FINDINGS

It is our conclusion that no credible case for the importation of guest workers can be made on the basis of alleged labor shortages in this state.

An important starting point in our analysis is to recall that the implementation of the Special Agricultural Worker (SAW) provisions of IRCA resulted in the legalization of more than 1 million workers; the majority of applicants for SAW status were residents of California.¹ Surveys by the United States Department of Labor subsequent to the passage of IRCA strongly suggest that, by and large, these California farm workers remain committed to agricultural employment.

However, it is a fact that Latino farm workers experience many months of unemployment and underemployment each year, and many seek non-farm employment to make ends meet. Those workers are the lucky ones: **They have work.** But thousands of other workers are unemployed in the very counties where most seasonal agricultural production occurs, and they have few prospects of any employment. Admission of guest workers can only exacerbate the terrible problem of poverty and joblessness in rural California since it will inevitably deprive U.S. citizens and lawful residents of gainful employment in agriculture.

CRLA recently surveyed official unemployment rates in 17 major agricultural labor use counties for the period from December 1986 (when IRCA went into effect) up to the present. The graphs

¹Commission on Agricultural Workers, "REPORT OF THE COMMISSION ON AGRICULTURAL WORKERS," November, 1992 (Washington, D.C.), p. 63.

included in this report provide summary information about these data; if you are interested, you can write us to receive copies of the individual state agency documents from which these data were drawn. (Some versions of this report may already include these documents, starting at page 27.)

As the first graph in this report demonstrates (p. 6), the survey results for the target 17 counties are fairly striking: rarely since 1986 has unemployment, on the average, been less than 10 per cent during the peak harvest periods (June data); during off-peak months (January data), unemployment has seldom been less than 15 per cent. If you look at individual counties, unemployment rates are often much higher for both time periods.

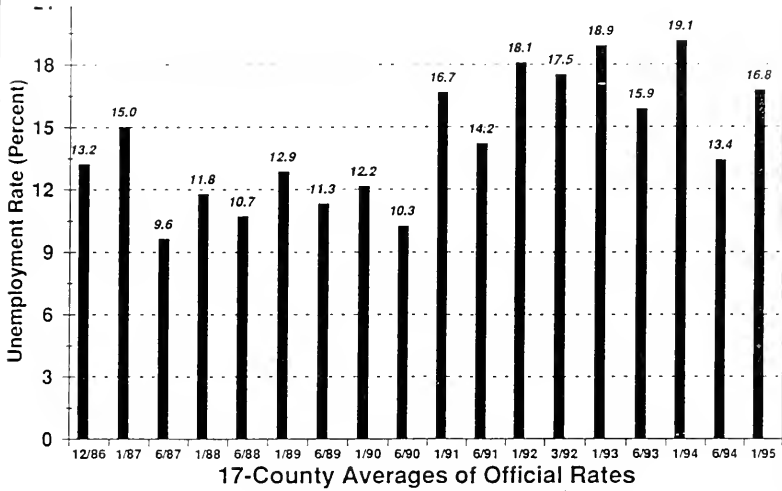
Of course, these data are averages; and in some crops and counties, peak employment or unemployment months occur at different times. In addition, these data have many other limitations: The state unemployment agency has made changes to methodologies, or data reporting standards, or both, during the last ten years; the data are not seasonally adjusted; and, perhaps most importantly, part-time and discouraged workers in these counties are not reflected at all in these data.

Yet, one general conclusion is clear and indisputable: state agency data demonstrate a persistent, high level of unemployment in the very counties where guest workers are expected to be admitted in large numbers.

Agricultural employers may argue that unemployed individuals in urban California are unwilling to do agricultural work, but, as this report shows, unemployment in California's rural counties is staggeringly high, and the trend the last ten years is toward higher and higher unemployment rates and numbers. (See, for example, Graph No. 20.) CRLA believes that many tens of thousands of these unemployed and underemployed individuals are, in fact, SAWs legalized by IRCA who are able, willing and available for agricultural employment.

In future reports, CRLA intends to provide key policy makers with data and policy-related information concerning other issues that will be raised as guest worker programs are debated in the Congress. As legislation moves forward, we are eager to answer any questions you may have about these important matters. Feel free to contact me in Sacramento at 916-446-7901. Thank you for your consideration of our clients' views.

**Graph 1: Unemployment Rates, 1986-95
Counties With High Seasonal Labor Use**



CALIFORNIA RURAL LEGAL ASSISTANCE

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Table 1

Monthly Unemployment Data for 17 California Counties

COUNTY	12/1986	1/1987	6/87	1/88	6/88	1/89	6/89
Colusa	15.5	18.9	7.5	14.9	8.7	15.2	9.2
Fresno	12.4	14.1	9.1	11.1	10.1	11	9.4
Glenn	12.1	14.1	10.5	11.2	12	13.2	13.5
Imperial	22	22.2	17.9	16.7	19.4	19.5	22.5
Kern	11.8	13.4	9.3	9.7	9.7	10.8	11.1
Kings	11.7	15	8.7	11.1	9.8	12.4	10.2
Madera	11.3	11.9	8.4	8.9	10.7	11.5	11.8
Merced	12.6	15.2	10.4	11.8	11.1	12.7	11.3
Monterey	12.1	14.8	6.3	11.4	7	12.2	6.6
SBenito	16.8	19.1	12.1	15.2	12.6	16.3	13.2
SJoaquin	11.9	13.1	9.1	10.7	10	10.9	10.3
Stanislaus	13.9	15.6	12.2	12	12.9	12.4	12.7
Sutter	16	16.7	9	13.9	12.3	15.7	13.2
Tehama	9.4	11.3	7.3	9.6	8.7	12.3	10.1
Tulare	13	13.6	8.6	10.4	9.2	10.5	10.1
Yolo	9.2	10.5	6	8.3	5.9	8.3	5.6
Yuba	13.1	15.9	11.4	13.4	11.9	13.7	11.3

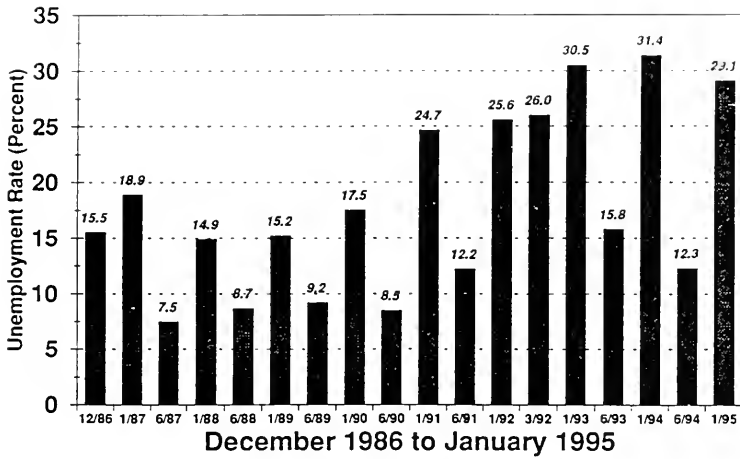
County	1/90	6/90	1/91	6/91	1/92	3/92	1/93	6/93
Colusa	17.5	8.5	24.7	12.2	25.6	26	30.5	15.8
Fresno	10.6	8.8	14.4	11.7	15	16.6	16.4	13.7
Glenn	12.9	12.9	18	18.4	19.3	20.3	21.1	20.3
Imperial	18	16.2	17.7	20.5	19.9	20.6	24	24
Kern	10.3	9.7	12.5	11.1	14.3	15.6	15.8	14.8
Kings	11	9.4	15.6	12.7	16.7	16.3	18.7	15.4
Madera	10.3	11	13.8	14.1	14.8	17.2	15.1	14.3
Merced	12.5	10.7	16.8	15.6	18.4	18.9	19	16.8
Monterey	12.1	6.6	17.1	9.3	16.9	14.7	18.4	10.5
SBenito	13.5	13	21.9	18.3	21.9	22.9	23.3	18.2
SJoaquin	10.2	9.5	13.9	12.7	15	14.8	16	15.5
Stanislaus	11.6	11.7	15.8	16.6	16.3	17.4	17.4	18.3
Sutter	15.7	11.8	21.3	17.3	21.3	24.4	20.7	18.5
Tehama	10	10.2	15.3	13	13.9	14.7	15.3	14
Tulare	11.2	9.6	18.5	15.3	17.6	18.7	18.5	14.6
Yolo	7.6	4.9	9.2	7.2	9.8	9.9	11.3	7.9
Yuba	11.6	9.8	17	15.5	17.6	18.6	19.8	17.4

County	1/94	6/94	1/95
Colusa	31.4	12.3	29.1
Fresno	17.2	12.1	15.4
Glenn	19	17.3	19.2
Imperial	27	22.8	18.8
Kern	17	13.5	14.7
Kings	18.7	12.2	17.2
Madera	17.7	13.2	15.9
Merced	19.6	14.5	17.8
Monterey	20	8.8	17.8
SBenito	19.3	13.6	16.4
SJoaquin	15.8	12.3	13.5
Stanislaus	18.7	15.5	15.9
Sutter	21.4	14.1	19.1
Tehama	14.9	11.5	12.7
Tulare	19	14.1	16.9
Yolo	9.5	5.8	8.1
Yuba	19.2	14.2	16.4

Sources: State of California: Employment Development Department, Employment Data and Research Division: Rpt 4000, "Monthly Labor Force Data for Counties", State of California: Employment Development Department, Employment Data and Research Division: "Labor Market Conditions in California."

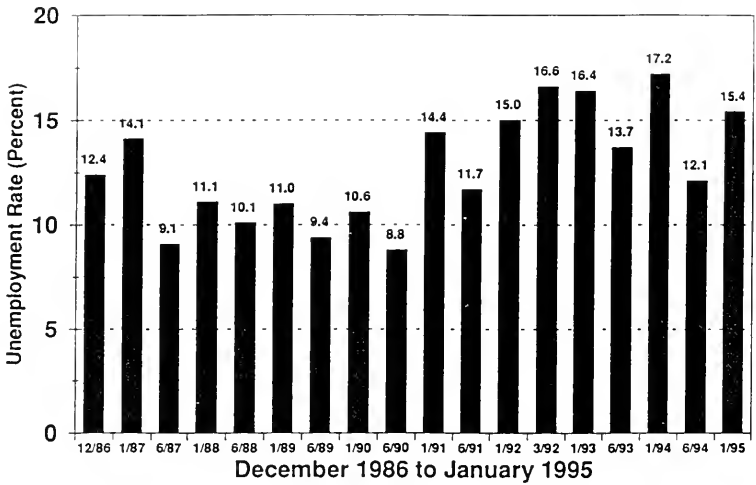
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Graph 2
Colusa County Unemployment Rates



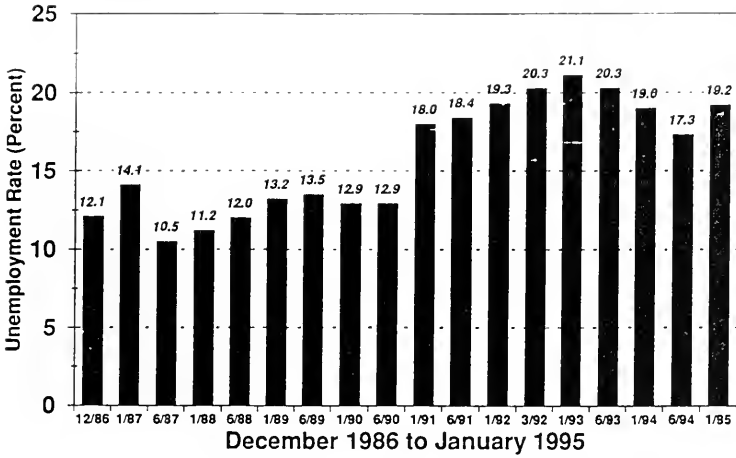
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Graph 3
Fresno County Unemployment Rates

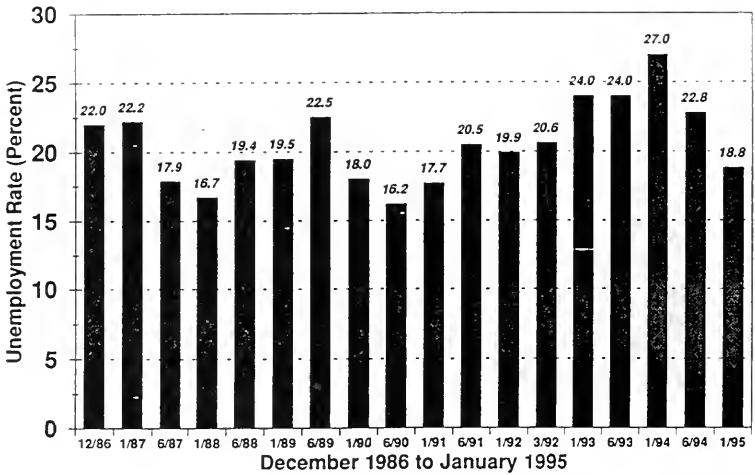


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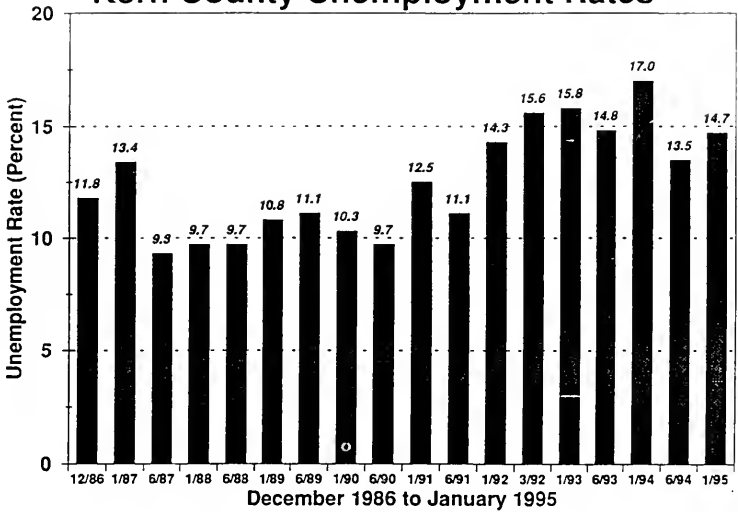
Graph 4
Glenn County Unemployment Rates



Graph 5
Imperial County Unemployment Rates

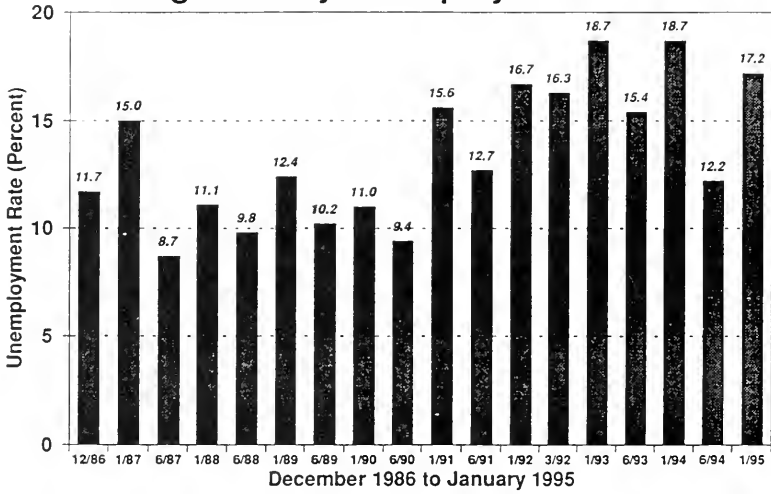


Graph 6
Kern County Unemployment Rates



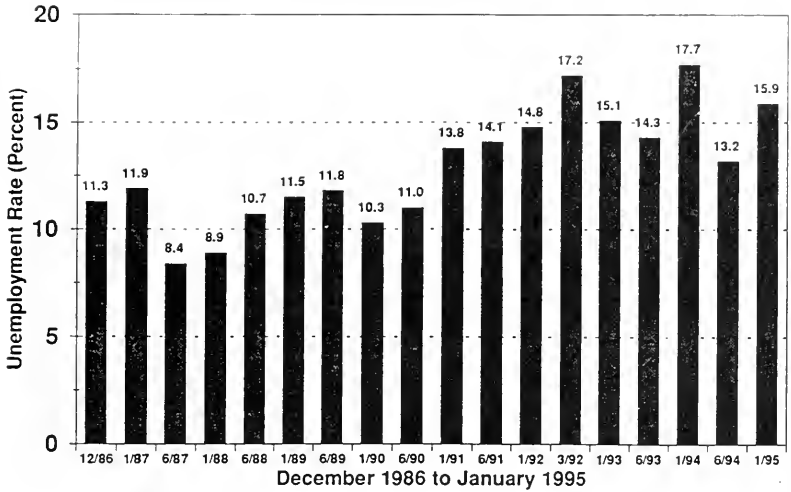
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Graph 7
Kings County Unemployment Rates

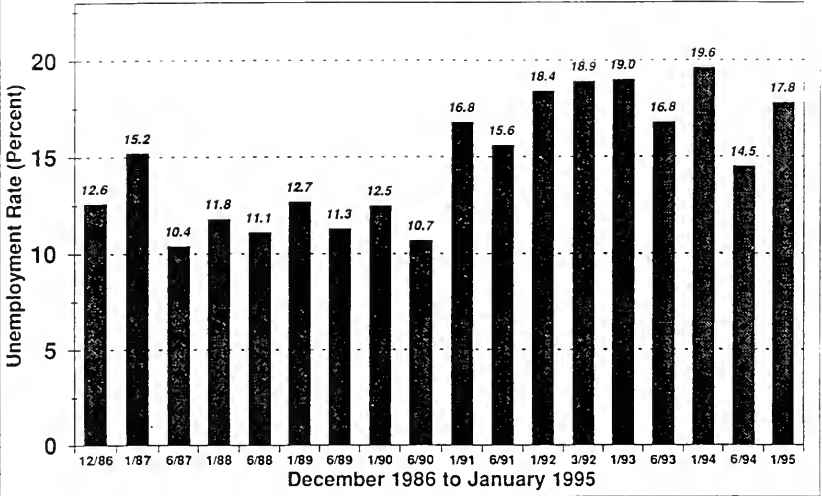


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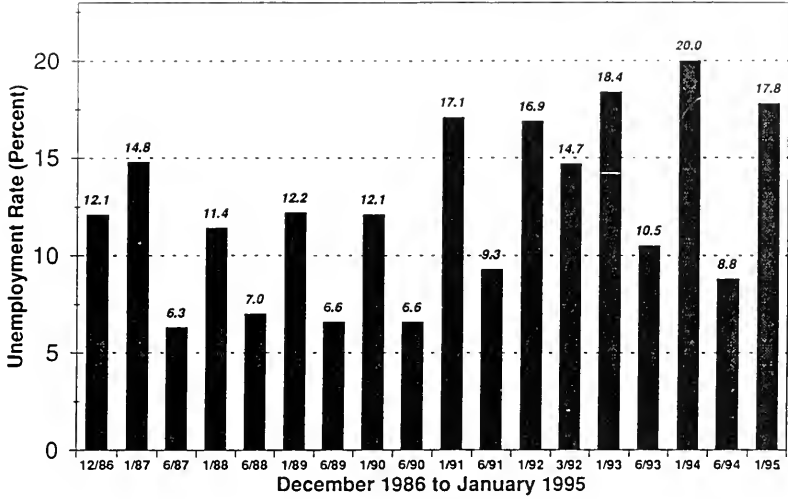
Graph 8
Madera County Unemployment Rates



Graph 9
Merced County Unemployment Rates

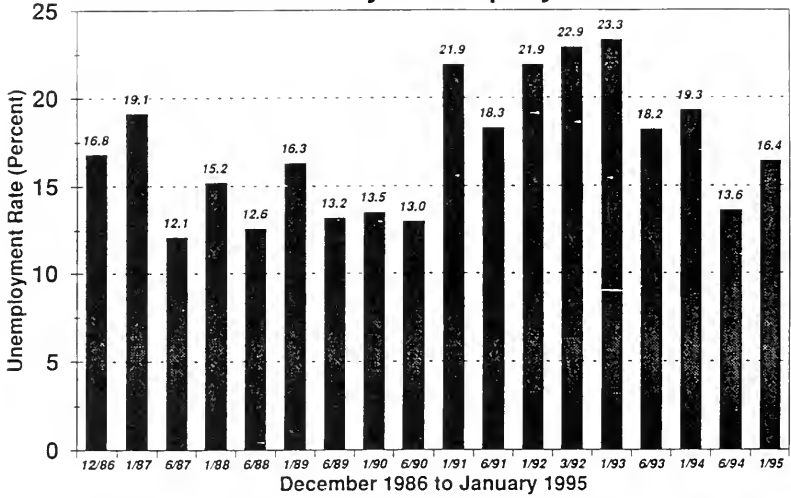


Graph 10
Monterey County Unemployment Rates

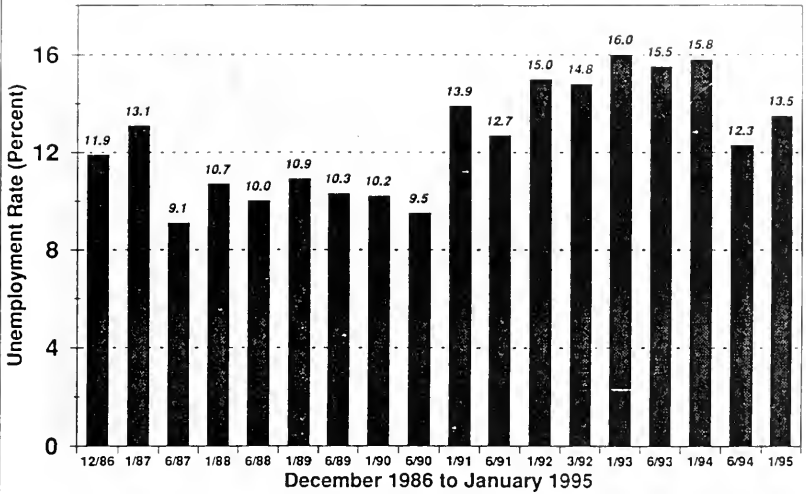


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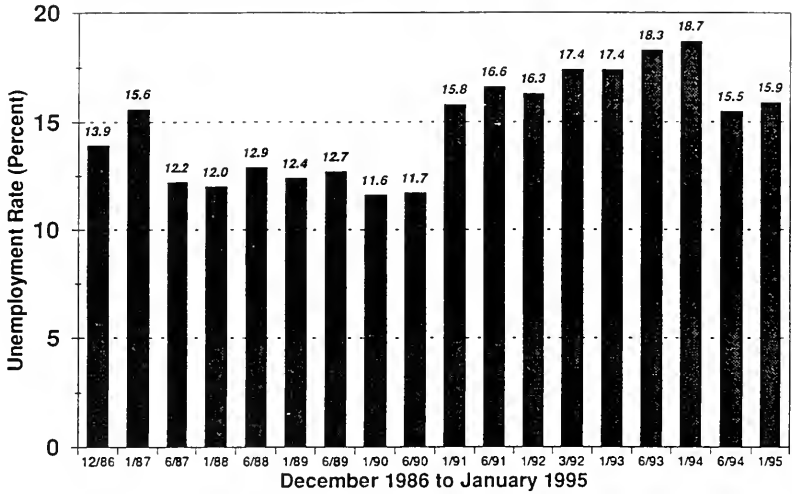
Graph 11
San Benito County Unemployment Rates



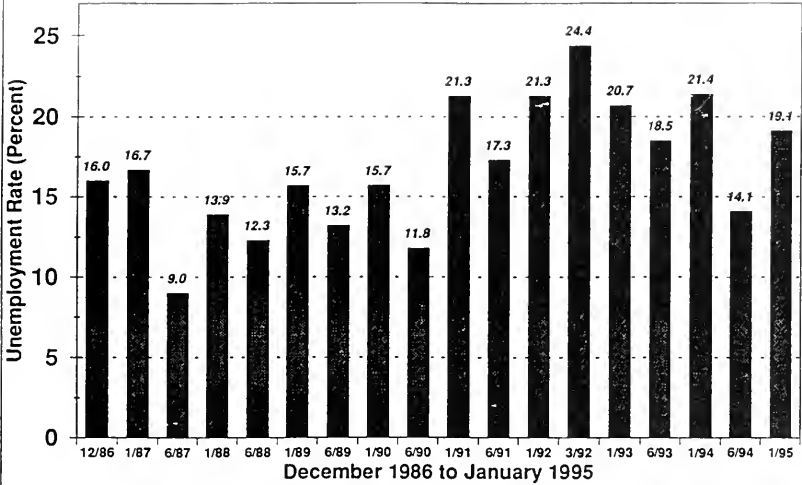
Graph 12
San Joaquin County Unemployment Rates



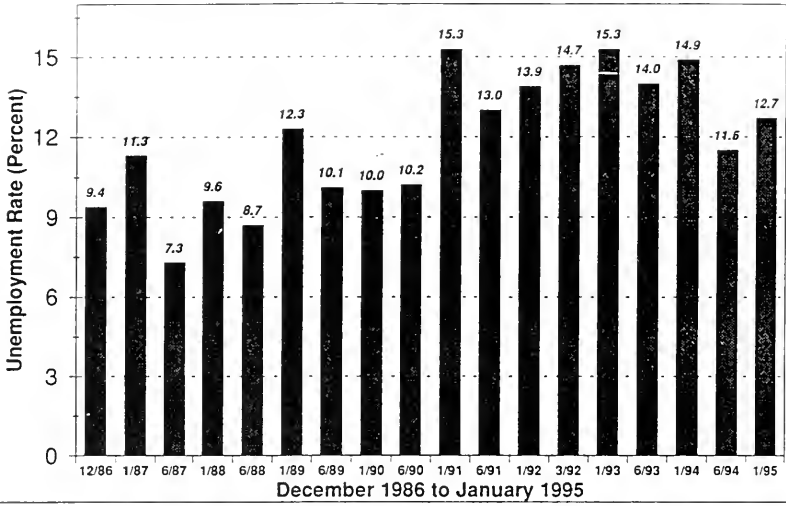
Graph 13
Stanislaus County Unemployment Rates



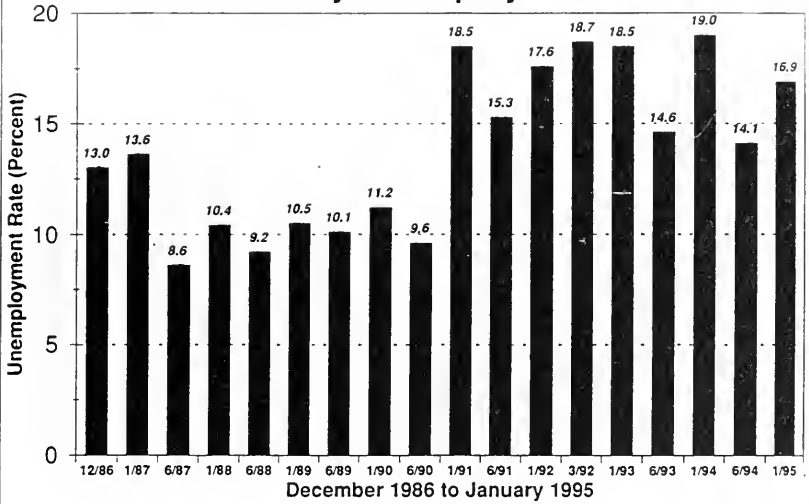
Graph 14
Sutter County Unemployment Rates



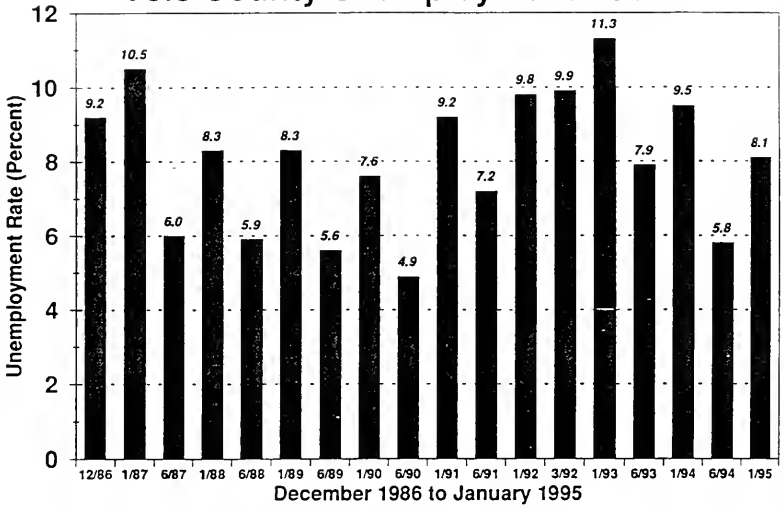
Graph 15
Tehama County Unemployment Rates



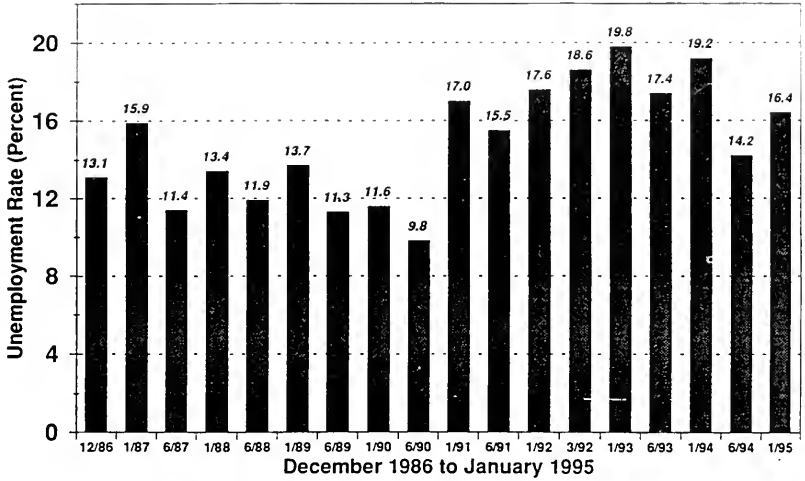
Graph 16
Tulare County Unemployment Rates



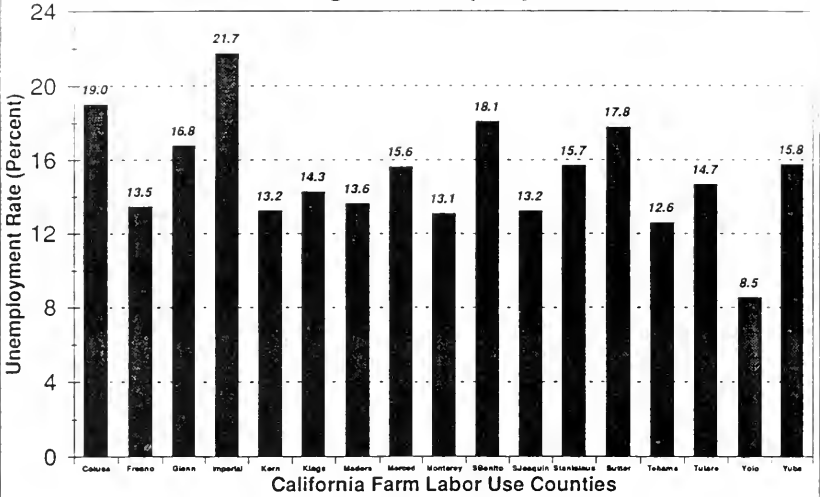
Graph 17
Yolo County Unemployment Rates



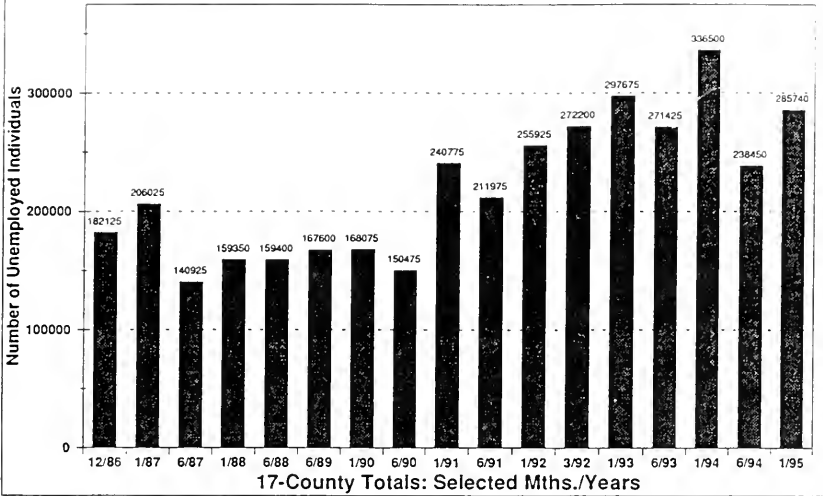
Graph 18
Yuba County Unemployment Rates



Graph 19
10 Year Average Unemployment Rates



Graph 20
Total Numbers of Rural Unemployed



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Mr. SMITH. Thank you, Mr. Schacht.

Mr. Goldstein.

Let me add that we've been joined by a colleague, Sam Farr, who is sitting in on the hearing as well.

Mr. Goldstein, please proceed.

**STATEMENT OF BRUCE GOLDSTEIN, ATTORNEY,
FARMWORKER JUSTICE FUND, INC.**

Mr. GOLDSTEIN. My name is Bruce Goldstein. I am an attorney with the Farmworker Justice Fund, an advocacy group in Washington, DC, for migrant and seasonal farmworkers with substantial experience in temporary foreign worker issues.

America does not need a new temporary foreign agricultural worker program, both because we already have one and because farmworkers are suffering from a chronic labor surplus. The Commission on Agricultural Workers, and every other reputable study, have found a substantial oversupply of agricultural labor with resulting high unemployment and underemployment, stagnant or declining real wages, and abysmal working conditions.

Rather than modernizing their labor practices to retain a stable labor force, many growers have gone on the offensive, as evidenced by increased use of abusive labor contractors and growing use of undocumented farmworkers.

Incongruously, during this period of a labor surplus, the Labor Department has continued to permit several thousand growers to hire temporary foreign workers under the H-2A temporary foreign worker program. Although the Florida sugarcane industry has replaced its 9,000 H-2A workers with machines, the H-2A program recently has spread to new growers in North Carolina, Kentucky, Tennessee, and Illinois. Many growers prefer temporary foreign workers from developing nations because such workers are so vulnerable that they are docile. As nonimmigrants, the H-2A workers do not acquire any rights to become resident aliens or citizens. H-2A workers ordinarily may only work for the employer that hired them and must leave the country immediately upon termination of their employment. Such workers are usually too afraid and too financially desperate to challenge harsh conditions or illegal employment practices. U.S. farmworkers cannot compete successfully against temporary foreign workers.

One recent event symbolizes the problem with guest worker programs. In 1994, the New England Apple Council, through John Young, which annually obtains more than 2,000 Jamaican apple pickers, informed the Labor Department as to the characteristics of the U.S. workers they would be willing to interview for jobs. These growers said in writing that they preferred to interview males, age 22 to 40, lacking any physical disabilities, including hearing impairments and diabetes, and lacking relatives living in the local area. A copy of this document is attached to my written testimony.

Obviously, the Apple Council's age, sex, and disability discrimination and antifamily policy are not the way to attract and retain U.S. farmworkers. But that's the very point: the H-2A growers prefer foreign workers and wish to avoid applications by U.S. farmworkers.

The H-2A program regulations and enforcement are actually too weak and need to be strengthened to protect U.S. workers against unfair competition.

And I guess my time is up.

Mr. SMITH. Actually, I'm not totally convinced that I gave you the full time. [Laughter.]

Mr. GOLDSTEIN. I didn't think I was that far off.

Mr. SMITH. If you'd like, please proceed. Take another minute.

Mr. GOLDSTEIN. I had planned this to meet the 5 minutes. [Laughter.]

As I was saying, the H-2A program regulations and enforcement efforts are actually too weak. Employers seeking H-2A workers must first secure Labor Department certification that there is a labor shortage and that the offered wages and conditions will not adversely affect those of U.S. farmworkers. In addition, a detailed job offer must be submitted in advance to DOL and given to workers. The job offer enables DOL to determine whether the employer's job terms would adversely affect U.S. farmworkers, and it also serves as the workers' enforceable contract. There are also some limited protections against depression of wage levels caused by the presence of foreign workers. In addition, growers must engage in private market recruitment of U.S. workers and recruit through the Interstate Job Service as well.

The agricultural industry would establish a massive new non-immigrant program that would eliminate the few protections that U.S. and foreign workers have against mistreatment. It would replace the current labor certification with a mere labor condition attestation. No detailed job offer would be filed. There would be no effective test of the domestic labor market to determine whether there is a true labor shortage. Indeed, growers would not be obligated to engage in any significant recruitment efforts outside the local area, even though they would be, by definition, seeking migrant farmworkers. Domestic migrant farmworkers who arrived a few days after the season would be denied work, as there would be no job preference for U.S. workers like that in the H-2A program's 50 percent rule. Nor would there be a three-fourths minimum work guarantee, a protection that has existed since the bracero program.

Apparently, the growers do not even want to be obligated to guarantee that adequate housing will be available. Further, there will be no adverse effect wage rate to protect farmworkers against the depressing effect caused by the presence of foreign workers. The grower proposal is also cleverly designed to prevent any real government enforcement.

The agricultural industry's proposal to supplant the H-2A program with a new temporary foreign worker program would deny jobs to U.S. farmworkers, depress wages and working conditions, and permit mistreatment of vulnerable foreign workers. Approval of this proposal would be a cruel mistake on a massive scale.

Thank you for the opportunity to appear before you today and, again, for a good balance in the speakers on the panel.

[The prepared statement of Mr. Goldstein follows:]

PREPARED STATEMENT OF BRUCE GOLDSTEIN, ATTORNEY, FARMWORKER JUSTICE
FUND, INC.

My name is Bruce Goldstein. For the last 8 years I have been an attorney with the Farmworker Justice Fund. Prior to that I worked for the National Labor Relations Board and in private practice.

The Farmworker Justice Fund is a Washington, D.C.-based nonprofit organization that advocates and litigates on behalf of migrant and seasonal farmworkers. During the last fifteen years, the Farmworker Justice Fund has spent considerable effort on policy issues regarding immigration and temporary foreign worker programs. We have been and are representing both foreign and domestic workers in litigation regarding the H-2A program.

We thank you for the opportunity to speak today and for the balance of views represented on the panels of speakers.

We are somewhat disappointed at the focus of the hearing, however. In late 1992, the Commission on Agricultural Workers, which Congress established, recommended various policies and practices concerning agricultural labor relations. The Commission, which was dominated by agricultural industry representatives, said that it hoped to improve the miserable working and living conditions experienced by many farmworkers while keeping agriculture profitable and internationally competitive. The one major policy that the Commission recommended against was a new foreign-worker program. Yet here we are today talking about an agricultural foreign-worker program and virtually nothing else. If we are going to discuss agricultural labor issues, a new foreign-worker program should be the furthest thing from your minds.

I. RATHER THAN CONSIDER ANOTHER FOREIGN LABOR PROGRAM, CONGRESS SHOULD EXAMINE THE AGRICULTURAL INDUSTRY'S FAILURE TO FOLLOW 50 YEARS' WORTH OF RECOMMENDATIONS TO MODERNIZE AND IMPROVE ITS LABOR PRACTICES TO ATTRACT AND RETAIN A STABLE WORK FORCE

The Congress of the United States should not be examining the question of a new guestworker program at this time because we have an agricultural labor surplus. Congress should be taking action to improve the terrible wages, employment practices and living conditions experienced by many migrant and seasonal farmworkers in the United States. Congress needs to take action to end the rampant violations of the few rights that farmworkers possess, and should create incentives for agricultural employers to modernize and improve their labor management systems.

Just two years ago, the Helsinki Commission, officially known as the Commission on Security and Cooperation in Europe, published a briefing entitled "Implementation of the Helsinki Accords: Migrant Farmworkers in the United States" (May 1993 U.S. Gov't Print'g Office). After extensive research and public hearings, the Helsinki Commission could find no valid justification for use of temporary foreign workers in agriculture. In its list of recommendations, the Helsinki Commission's 1993 report said:

"The H-2A and H-2B visa programs, which enable agricultural employers to import temporary foreign workers into the United States, should be discontinued because domestic workers are displaced and foreign workers have been subject to abuse. If the program is to continue, the Department of Labor must be required to improve enforcement of existing protections and revise policies to prevent future abuses." [*Id.* at p. v.]

The Helsinki Commission report is just one of many official bodies that have criticized Congressional and Administration policies for creating disincentives to modernization in agricultural employment practices. I quote:

"The issue we face as a matter of national policy is this: Shall we continue indefinitely to have low work standards and conditions of employment in agriculture, this depending on the underprivileged and the unfortunate at home and abroad to supply and replenish our seasonal migratory work force?

"We have long waived [six] and compromised on the issue of migratory labor in agriculture. We have failed to adopt policies designed to insure an adequate supply of such labor at decent standards of employment. Actually, we have done worse than that. We have used the institutions of government to procure alien labor willing to work under obsolete and backward conditions and thus to perpetuate those very conditions. This not only entrenches a bad system, it expands it."

That was said forty-four years ago by the President's Commission on Migratory Labor in a major study entitled "Migratory Labor in American Agriculture" (March 26, 1951) at 22-23 (emphasis added).

That statement is more true today. It has been more than half a century since Carey McWilliams wrote "Factories in the Field" (1939), documenting the develop-

ment of labor intensive agriculture from small family farms to medium- and large-scale corporations that had modernized everything in their business except the way they treated their field workers. Labor-intensive agricultural businesses use 21st century technology but 19th century labor practices.

In every other industry in our capitalist economy, companies that want to stay in business make plans to recruit, hire and retain United States workers. Companies in other industries adapt to conditions in the labor market. But not agriculture.

We have an antiquated, disorganized system of labor relations in United States agriculture and it has been recognized as such for more than 50 years. After extensive investigations during 1940 and 1941, Congress recognized "the widespread disorganization in the agricultural labor market; a disorganization accentuated in recent years by a surplus of labor supply over demand." "Report of the Select Committee to Investigate the Interstate Migration of Destitute Citizens," House of Representatives, House Rept. No. 369, 77th Cong., 1st Sess. (1941) at 358.

Fifty-one years later the Report of the Commission on Agricultural Workers repeated that finding. The Commission criticized the disorganization of the farm labor market and the fact "that many individual labor-intensive farm operations are also riddled by organizational inefficiency. Worker dissatisfaction and turnover increase employer costs and reduce farmworker earnings. Mutual employer-worker benefits are possible through the adoption of modern labor management techniques." [CAWs Report at xxxi and 135.]

Based on these and other findings, the CAWs Report made the following recommendation:

"To assure its long-term competitive position, agriculture must improve its labor-management practices. This report suggests ways to stabilize the labor force, improve productivity, and increase earnings for farmworkers through longer periods of employment." [CAWs Report at xxxi and 139.]

The Commission on Agricultural Workers, a majority of whose members represented the agricultural industry, specifically rejected requests for a new or expanded foreign-labor program. *Id.* at 133. It said that the agricultural industry had to modernize and stabilize the labor force and that government had to enforce the laws affecting farmworkers. In this way, the Commission said, farmworkers' lives would improve and the goal of controlling illegal immigration would be served because there would be little advantage to growers in hiring undocumented and foreign workers. *Id.* at 139.

The agricultural industry's audacity in requesting a new wave of foreign workers at this time astonishes us. We have not yet finished the effects of the most recent wave of foreign workers under the Immigration Reform and Control Act of 1986. IRCA's Special Agricultural Worker ("SAW") program, 8 U.S.C. § 1160, legalized more than one million formerly undocumented farmworkers.

Every reputable study during the last several years has found that there has been a labor surplus in agriculture with high unemployment and underemployment, stagnant or declining real wages and working conditions. For example, the Department of Labor's 1994 report based on the National Agricultural Workers Survey said,

"The U.S. farm labor system is characterized by an oversupply of workers.

"The chronic oversupply of agricultural workers in the United States has led to a pattern of replacement of one group by another. Farmworkers cannot achieve and maintain improved pay and working conditions while employers and intermediaries can recruit newly-arrived immigrants willing to work for less." [U.S. Department of Labor, "Migrant Farmworkers: Pursuing Security in an Unstable Labor Market," based on data from the National Agricultural Workers Survey (NAWS), Research Report No. 5 (May 1994) at 38.]

The CAWs report, after an exhaustive investigation, determined that the workers who were legalized under the SAW program are not leaving agriculture and are not expected to leave agriculture.

"Overall research on occupational mobility, past research on immigrant farmworkers, post-IRCA farm labor market research, and Commission testimony and case studies indicate that most SAWs are likely to remain in agriculture throughout their working lives." [CAWs report at 80.]

Let's examine what the agricultural industry has done during this time of oversupply to stabilize its labor force or modernize its labor practices. The answer is: virtually nothing. Indeed, things have gotten worse; growers have exploited the opportunity presented by an oversupply of labor.

Despite the existence of a surplus of authorized farmworkers, many of whom are underemployed and earning an average of \$5,000-6,500 per year, the percentage of undocumented farmworkers has rapidly increased during the last few years. The Commission on Agricultural Workers said that the percentage of unauthorized seasonal agricultural workers had increased each year from 1989 through the time of

its findings. The Department of Labor said that in 1994, about 16% of farmworkers lacked work authorization. Dept. of Labor, "The National Agricultural Workers Survey (NAWS): Recent Findings Relevant to Policy Development and Program Planning Evaluation" (Feb. 2, 1995) at 39. Among migrant farmworkers (as contrasted with those seasonal farmworkers who do not migrate), the percentage of undocumented is even higher, probably about 25%. "Migrant Farmworkers: Pursuing Security in an Unstable Labor Market" at 19.

Just last month, The Atlantic Monthly magazine described the California strawberry growers' switch from Spanish-speaking Mexican workers to indigenous Mexican workers how speak only Mixtec or another dialect. Many of these workers are undocumented. Eric Schlosser, "In the Strawberry Fields," The Atlantic Monthly (Nov. 1995) at 80, 102.

Another devastating development has been the increased use by growers of farm labor contractors as a response to the threat of enforcement of employer sanctions against hiring undocumented workers. The Commission on Agricultural Workers and the Department of Labor found that after the passage of IRCA in 1986, the use of farm labor contractors, or "crewleaders," increased. As the NAWs report shows, one of the characteristics of farm labor contractors is that they prey on the most vulnerable farmworkers: workers who just recently arrived in the United States, many of whom lack immigration authorization. In these ways, growers can keep labor costs low. See Department of Labor, U.S. Farmworkers in the Post-IRCA Period, Based on Data from the National Agricultural Workers Survey (NAWS), Research Report No. 4 (Mar. 1993) at 34-35; Department of Labor, Migrant Farmworkers: Pursuing Security in an Unstable Labor Market at 36-37.

The House of Representatives itself has known for many years that agricultural employers have used farm labor contracts to exploit vulnerable workers while escaping liability. A House of Representatives report after a lengthy investigation said the following:

"One of the techniques by which responsibility for the conditions of employment is evaded is the labor contract system. Some of the previous illustrations of labor recruitment designed to, or having the effect of, reducing wage rates and intensifying the disorganization of the agricultural labor market showed that the labor was an effective agent in bringing about these conditions."

"The labor contractor system has led to abuses which have increased the disadvantages already endured by the seasonal migrant."

That was written in 1941. Report of the Select Committee to Investigate the Interstate Migration of Destitute Citizens, House of Representatives, House Rept. No. 369, 77th Cong., 1st Sess. (1941) at 380. Although not every labor contractor is abusive, the increasing trend toward using labor contractors constitutes further evidence of the agricultural industry's failure to modernize its labor practices and stabilize its workforce.

Rather than modernize its labor practices or improve wages and working conditions to retain the legalized labor force in the United States, the agricultural industry as a whole has come to Congress and asked for a new wave of foreign workers. Why? Because new foreign workers are more vulnerable to abuses and less able to protect themselves than the old ones.

The 1941 Congressional Report on Interstate Migration said the same thing more than 50 years ago:

"There is first a preference in many agricultural areas for cheap foreign labor. . . . In recent years Mexico has been a fruitful source of supply. Chinese, Japanese, Hindus, Filipinos, and others have at one time or another been imported or encouraged to come into this country as migratory field workers. As community sentiment, national policy, or other factors imposed effective barriers, recruitment proceeded from one source to another."

Report of the Select Committee to Investigate the Interstate Migration of Destitute Citizens at 366. As indicated above, tens of thousands of Mixtec Indians have been brought into California agriculture, the next great group of vulnerable farmworkers.

The agricultural industry does not need a new temporary foreign worker program; there are enough domestic farmworkers. the industry needs to modernize its labor practices to attract and retain domestic farmworkers and Congress should create incentives for that to happen. Moreover, if labor shortages do occur, there already is a temporary foreign agricultural worker program that has existed for more than 50 years. The H-2A program should be made more protective of farmworkers, not replaced by the one-sided proposals of the growers.

II. THE H-2A PROGRAM SHOULD BE STRENGTHENED TO PROVIDE GREATER PROTECTIONS AGAINST ABUSE OF TEMPORARY FOREIGN WORKERS, AND THE GROWERS' PROPOSAL TO EMASCULATE THE LIMITED LABOR PROTECTIONS THAT EXIST SHOULD BE REJECTED

The Immigration and Nationality Act's H-2A temporary alien agricultural worker program permits agricultural employers to hire "nonimmigrant" foreign workers when there are shortages of domestic farmworkers. 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184, 1188; 20 C.F.R. Part 655. As non-immigrants, temporary foreign farmworkers do not acquire any rights to become resident aliens or citizens. 8 C.F.R. § 214.2(h)(5). H-2A workers ordinarily may only work for the employer that hired them and must leave the country immediately upon termination of their employment.

A non-immigrant labor supply program poses risks of serious harm to domestic farmworkers and undue economic advantages to employers. Justifiably fearful of being fired and immediately deported to their economically depressed homelands, unskilled non-immigrant workers generally accept harsh or illegal employment practices without complaining, organizing unions or asserting their limited legal rights. United States farmworkers cannot compete successfully with temporary foreign workers from developing nations. The ability to control H-2A workers causes many employers to prefer non-immigrant farmworkers to immigrants or citizens.

To limit the dangers inherent in a non-immigrant worker program, the H-2A program requires employers to secure a "labor certification." Such employers must establish (a) that there is a shortage of qualified U.S. farmworkers at the place and time needed, and (b) that their job terms will not adversely affect the wages and working conditions of similarly employed U.S. workers. The 1986 legislative amendments streamlined the process to require the Department of Labor to decide whether a job offer is lawful within 7 days, and even more quickly in the case of an emergency.

The Department of Labor has not been strict in requiring proof of true labor shortages before granting labor certifications for foreign workers. Despite several years of proven farm labor surpluses, the Labor Department has continued to certify a labor shortage for the same growers year after year. In fact, the agency has permitted hundreds of new growers to enter the program during the last 5 to 7 years. More than 300 growers in North Carolina alone are now hiring more than 3,500 temporary foreign workers each year. A DOL official in the H-2A program told me that about 16,000 H-2A positions were certified in 1995. Although this reflects a decline from a few years ago, most of the decline results from the mechanization of the Florida sugar cane harvest, which used to import about 9,000 H-2A workers. The H-2A program has been spreading geographically during a time of labor surplus.

It does not make sense that the Department of Labor has certified labor shortages of migrant workers at a time of a surplus of migrant workers willing to work for low wages and under poor working conditions. Moreover, then H-2A growers' seeming inability to attract and retain domestic farmworkers is intentional and unlawful. The H-2A growers and the other organizations lobbying for a new foreign-worker program are on a quest for the vulnerable worker.

We offer an example demonstrating this quest for the vulnerable farmworker. The New England Apple Council (NEAC) for many years has secured temporary foreign workers from Jamaica for apples and a few other crops in Connecticut, Massachusetts, Vermont, New Hampshire and Maine. Its executive director, John Young, is the President of the National Council of Agricultural Employers (NCAE).

In late 1994 or early 1995, Mr. Young submitted to the DOL regional office in Boston a written "profile" of the type of domestic farmworkers that the growers wished to be referred from the Job Service. This profile of the desired job applicant stated preferences for males, aged 22 to 40, lacking any physical impairments (including hearing impairments and diabetes), and lacking relatives in the local area. Among the astounding statements in the employee profile were the following:

"WE [sic] prefer male workers aged 22-40[.]

"Workers with no relatives in the immediate area are preferred [sic]."

A copy of this document is attached to my written testimony.

In other words, the growers said that they wished to violate not only the H-2A regulations, but also the Age Discrimination in Employment Act, the Equal Employment Opportunity Act's provision prohibiting sex discrimination, and several other federal and state laws. We wonder how these growers expect 45-year old, career farmworkers to support their families. The growers' request for persons who lack family members in the local area ensures that workers will lack any base of support if they wish to quit work due to unlawful or inadequate conditions; such workers

would have nowhere to turn. Such anti-family policies are completely inappropriate, unlawful and unfair.

Incidentally, DOL eventually rejected the employee profile as unacceptable, but only after The Boston Globe made inquiries about the case. The agency took no action against the growers other than a mild rebuke. The Globe published an article about the scandal on March 24, 1995, which is attached. DOL would almost undoubtedly have taken no action had the document not been leaked.

It is not surprising that these H-2A growers made such demands. The use of non-immigrant workers has enabled these growers to avoid competing for the broad range of workers available in the United States labor force. H-2A workers are always young, single, from developing countries, and male, with no relatives residing in the area and no right to stay in the United States. By virtue of their restricted immigration status and their desperate financial straits, H-2A workers are a docile labor force.

For more than 50 years, serious abuses under the H-2A program and its predecessors have been documented by judges, legislators, government officials, and journalists. The list of abuses under the H-2A program and its predecessors is too long to reiterate here. It would take hours just to list the multitude of ways in which Jamaican sugar cane cutters and apple pickers were underpaid under the H-2A program. Some of these violations of workers' rights and losses of millions of dollars in wages were detailed in the "Report on the Use of Temporary Foreign Workers in the Florida Sugar Cane Industry," prepared by the staff of the House Committee on Education and Labor in July 1991 (Serial No. 102-J).

A General Accounting Office report entitled "Foreign Farm Workers in U.S.: Department of Labor Action Needed to Protect Florida Sugar Cane Workers" (GAO/HRD-92-95), documented a series of abuses related to the deduction of more than 25% of the Jamaican workers' wages. Among the findings:

"Workers were forced to bear a portion of the cost of transportation to and from the place of employment even though DOL regulations require employers to reimburse eligible workers for all such costs;

"The insurance plan for non-occupational injury has not met the requirements of the Employee Retirement Income Security Act (ERISA) and has received virtually no oversight despite exorbitant premiums, bare bones insurance coverage, and questionable use of excess funds.

"Workers have been forced to place 23% of their earnings in a savings plan for which they did not receive interest and have not received the full amount deducted. About 2.5% (now 5%) of gross wages are taken from this deduction by WICLO for its un-monitored administration costs."

In every instance, the GAO found that DOL had been unwilling to take action to remedy abuses or had said that it would seek only partial remedies. Even if DOL were to find violations, it told GAO, it would not seek remedies prior to the 1991-92 season. In response, GAO said, "[W]e believe that Labor should attempt to deal with prior inequities against the workers."

It would take too many pages to describe how the North Carolina H-2A growers' association mistreated the Puerto Rican workers who went or tried to go to cut tobacco during the 1994 season. I spoke with a Puerto Rican worker who has been doing tobacco for thirty years both on the mainland and in Puerto Rico and he said that he had never been treated like an "animal" before going to North Carolina in that year. When he was fired by his North Carolina H-2A grower and replaced with an H-2A worker he gladly went to another state to work, but he suffered financially.

There are several critical protections in the H-2A program that, if enforced, help prevent employers from depriving domestic farmworkers of jobs and maintaining wages and working conditions attractive only to foreign workers from developing nations. Most of these have existed for many years. They include:

"Employers must first secure a Department of Labor 'labor certification' that there is a labor shortage and that the offered wages and working conditions will not adversely affect those of U.S. farmworkers.

"A detailed 'job offer' must be submitted in advance to DOL and given to workers. This requirement enables DOL to determine whether the employers' job terms would adversely affect U.S. farmworkers. It is also used as a recruitment device to help determine whether there is an actual labor shortage. Most important, it is an enforceable employment contract.

"Wages for both domestic and foreign workers must be set at the highest of: (a) the local labor market's prevailing wage; (b) the state or federal minimum wage, and (c) the 'adverse effect wage rate' (the 'AEWR'). The AEWR is a state-wide wage set by DOL that is supposed to alleviate the depressing effect on prevailing wages caused by the presence of many foreign farmworkers. Unfortunately, the AEWR cur-

rently is based on USDA's annual regional wage survey of agricultural and livestock workers, which is often tainted by the presence of foreign workers.

"The 'three-fourths guarantee' requires that employers provide recruited workers with employment opportunities for three-quarters of the number of hours in the job offer's season or pay for any shortfall. This provision protects migrant workers against employers who recruit a surplus of workers in order to drive down wages and guarantees migrating workers a reasonable minimum amount of work.¹

"U.S. workers have a job preference. Under the 'fifty percent rule,' H-2A employers must hire any qualified U.S. farmworker who applies for work until one-half the season has ended, even if a temporary foreign worker must be discharged to do so. (DOL, as required by IRCA, conducted a study prior to continuing this protection.)

"Workers who complete half the season at an H-2A program employer must be reimbursed for the transportation and subsistence costs associated with travelling to the place of employment. Those who complete the full season must be paid for their transportation costs of returning home.

"H-2A employers must provide housing for their workers. The scarcity of housing available to farmworkers renders this protection critical.

"Employers seeking foreign workers must recruit U.S. workers through the interstate employment service system *and* private-market methods of recruiting workers, known as 'positive recruitment.'

"Workers' compensation coverage or the equivalent must be provided for on-the-job injuries."

The summary of the agricultural industry's proposal that we have seen would establish a new non-immigrant program that would resemble the "H-1B program" for specialty occupations, such as computer operators and scientists, requiring bachelor degrees or equivalent experience. Farmworkers, however, lack the knowledge, resources and bargaining power that white collar workers possess to ensure reasonable terms and conditions of employment. The H-1B and similar programs are, therefore, ludicrously inappropriate. Indeed, they would be worse than the infamous *bracero* program that existed from World War II until 1964.

The employers' proposal would replace the current labor certification with a mere "labor condition attestation." No detailed job offer would be filed. There would be no effective test of the domestic labor market to determine whether there is a true labor shortage before approving the hiring of temporary foreign workers. Indeed, growers would not be obligated to engage in any significant recruitment efforts outside the local area even though by definition they would be seeking to hire migrant workers. Domestic migrant farmworkers who arrived a few days after the season began would be denied work, as there would be no 50% rule. Nor would there be a three-fourths minimum-work guarantee (a protection that has existed since World War II). Apparently, the California growers do not even want to be obligated to guarantee that adequate housing will be available even though they would be seeking Government approval for such international migrant farmworkers. Finally, there would be no adverse effect wage rate (AEWR) to protect farmworkers from the stagnation and decline in prevailing wages caused by the presence of foreign workers.

The grower proposal is designed to prevent any real enforcement. Apparently, the growers would not have to be provided a detailed statement of the workers' job terms, so there would be no clear contract for workers to enforce. In addition, the Department of Labor would be prevented from taking any significant action until after the growers had gotten the foreign workers, even if they had done so unlawfully.

The agricultural industry's foreign worker proposal would deny jobs to U.S. farmworkers, depress wages and working conditions, and permit the abusive treatment of vulnerable foreign farmworkers. If Congress would like to take action in the area of agricultural labor relations, it should examine the reports issued by the Helsinki Commission, the Commission on Agricultural Workers, the Commission on Immigration Reform (the "Jordan Commission"), and the U.S. Department of Labor. Congress could improve farmworkers' lives by granting temporary foreign workers the protections of the Migrant and Seasonal Agricultural Worker Protection Act of 1983. Congress should take away the exemptions from Social Security contributions for employers of H-2A workers, which gives growers a financial incentive to hire foreign workers. Congress could also tell the Department of Labor to improve its policies and enforcement under the H-2A program. Finally, if the United States needs

¹ For many years, H-2A apple growers unlawfully denied Jamaican H-2A workers their three-quarter guarantee money by claiming that they could unilaterally shorten the contract season in mid-season simply by giving a ten-day notice just prior to termination of work.

more foreign workers in the future, they should be given full immigration rights, rather than the H-2A program's status of indentured servant.

Improvements Necessary In the H-2A Program. Many of the improvements that are needed in the H-2A program can be accomplished by the Department of Labor. In January 1994, the Farmworker Justice Fund forwarded proposals to the Department of Labor for administrative and regulatory changes that would make the H-2A program work more like it was intended to work and should work. Unfortunately, the Labor Department has not adopted most of those proposals. They are quite modest and include the following:

"Transportation Cost Advances should be provided by the growers so that domestic workers who want to work for an H-2A grower can afford to travel to the place of employment.

"Reform the 'Adverse Effect Wage Rate' methodology because the Department of Labor is permitting H-2A growers to offer wage levels that attract foreign workers and not U.S. workers. DOL must also require that piece rates—which are the most common form of wage rates in agriculture—increase proportionally to increases in the Adverse Effect Wage Rate. DOL must also outlaw growers' efforts to claim that they pay on a 'task rate' that allegedly cannot be explained or regulated.

"Speed-ups in growers' productivity requirements to overcome the effect of increases in the minimum wage levels of the H-2A program must be prohibited.

"Employer Recruitment and Job-Retention Efforts using private market mechanisms must become meaningful. Growers must be required to take actions that reduce their dependence on foreign workers. Such efforts could include arranging with other employers for successive jobs for domestic farmworkers; giving satisfactory workers call-back rights for the following season; offering bonuses for recruiting additional workers; providing family housing, etc.

"Increase Employers' H-2A Fees to reflect the true cost of the H-2A program and end the substantial subsidy and incentive employers receive to hire H-2A workers.

"Increased Enforcement to prevent growers from firing or forcing the resignations of domestic workers through a variety of gimmicks."

All of these things would support the goal of allowing private mechanisms to stabilize the labor market in agriculture and end some of the worst abuses suffered by farmworkers.

III. CONCLUSION

There can be no justification for making it easier to hire temporary foreign farmworkers. Indeed, DOL has been too lax in administration of the H-2A program during these years of documented agricultural labor surpluses. The growers' proposal for a new temporary foreign worker program would make it easier for growers to claim phony labor shortages and to offer wages and working conditions attractive only to citizens of poor, developing nations. The H-2A growers' proposal would also cause unfair competitive disadvantages to those employers who wish to hire only domestic farmworkers. Rather than be given additional incentives to hire temporary foreign workers in conditions that resemble indentured servitude, agricultural employers, like other businesses in our competitive economy, should be required to compete for United States workers.

Thank you for the opportunity to appear before you today.



NEW ENGLAND APPLE COUNCIL, INC.

7 Main Street Goffstown, NH 03045

EMPLOYEE PROFILE NEW ENGLAND APPLE COUNCIL

Age Discrimination

WILLINGNESS The most important single factor needed in referrals is a person who wants farm work, they must be willing to learn and to take orders from superiors. They must be available at the time needed, and be able to arrange travel to the job.

PHYSICAL CONDITION We need workers who are in strong physical condition, workers who can withstand six eight hour days per week for the duration of the contract in varying weather conditions. Workers should not be overweight, have high blood pressure, diabetes, addiction to drugs or alcohol. They should be free from physical impairments of backs, limbs, eyes, ears, or any other condition which would make the individual unable to meet quality or quantity standards.

WE prefer male workers aged 22-40

EXPERIENCE We would prefer workers who have had prior agricultural experience, on a mainland farm.

Sex Discrimination

CLEANLINESS As housing is provided, general personal cleanliness, and willingness to keep the area assigned in the housing facility in a respectable clean manner is very important.

LANGUAGE It is important for workers at some locations to be able to speak and understand some english. We have some employers who have full spanish speaking supervisors, however we have limited capacity for other languages.

Anti-Family Policy

OTHER Workers from the country are preferred. Workers with no relatives in the immediate area are preferred.

The above profile is designed to be used as a guideline in recruiting for New England farm jobs.

Disability discrimination:
no hearing impairments, etc.

These are the instructions that the H-2A apple growers in New England recently gave to the Department of Labor for referring potential job applicants from inside the United States.

'Profile' of apple growers condemned

By Brian McGraw
GLOBE STAFF

New England's national apple orchards have been shaken by charges of civil rights violations, as federal officials yesterday charged a group of apple growers for using discriminatory language in a profile of foreign farm workers it hopes to hire.

In a set of documents that The New England Apple Council submitted to the U.S. Department of Labor seeking to hire foreign seasonal workers, the group said it would "prefer" only male employees, aged 22 to 40, willing to work six days a week and without any "physical impairments" or relatives who live in the New England area.

The profile specified that workers should be "free of physical impairments of backs, limbs, eyes, ears, or any other condition which would make the individual unable to meet quality or quantity standards."

Yesterday, labor officials in Boston sent the council a letter saying that the employee profile was "unacceptable."

"The working in the employee profile that was provided was unacceptable because it contained discriminatory language, and we felt there was a potential for civil rights law violations," said John Chavez, a spokesman for the Boston regional office of the Labor Department.

The letter was sent by Robert Schuler, the regional administrator

for the Employment and Training Administration, Chavez said. It included no formal action against the council, and did not indicate whether the request would be approved.

The issue was initially raised late last month by a group of watchdog lawyers, who accused the council of violating state and federal civil rights laws in the recruitment and hiring of close to 2,000 foreign seasonal workers.

"They want to be able to select young foreign workers who come here unattached and have no choice but to work for that one employer and be afraid that he will be deported if he complains or doesn't work to the limits of human endurance," said Bruce Goldstein, a staff attorney for the Farmworker Justice Fund in Washington, D.C. "I haven't seen anything quite like this," he said. "They want to avoid the diversity of the labor force in the U.S."

Goldstein had previously criticized the Labor Department for not immediately rebuking the New England Apple Council after receiving the documents early this year. Rather, Schuler wrote to Goldstein that the case was under review and informed him he would be withholding some pertinent documents from a Freedom of Information Act request made by the Farmworker group.

Yesterday's Labor Department letter was written a day after Schuler received a news media inquiry on the status of the case.

**'They want
...workers who
come here
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but to work for
that one employer
and be afraid that
he will be
deported if he
complains.'**

BRUCE GOLDSTEIN
Farmworker Justice Fund

For their part, council members said yesterday that they opposed any kind of discrimination. They said that the so-called employee profile — a two-page document outlining desired workers — had no bearing on who the group actually hired to pick apples and prune trees in the orchards scattered across New England.

"It wasn't to be used for hiring or anything," said John Young, the executive director of the council, which is based in Goffstown, N.H.

"It was a document to be put together in an attempt to define what would make the system work, how the referral process would work better. It wasn't intended to be a policy of who we hire."

"The hiring criteria is anyone who is willing and qualified and wants to do the job," said Young. "We were just attempting to identify, through experience, who has the better success rate at the job, which is physical."

Last year, the council hired 566 foreign workers in Massachusetts, 143 in Connecticut, 638 in Maine, 436 in Vermont and 15 in Rhode Island, according to the Farmworker Justice Fund. Young said most of those were Jamaicans who came for anywhere from eight weeks to six months.

The workers are allowed into the country only after the Labor Department determines that the jobs cannot be filled by available U.S. citizens. The member growers, like sugar cane growers in Florida, reimburse the workers for their transportation to the area, provide housing on farms or near orchards and serve three meals a day.

Young said that younger, stronger workers invariably make better employees, given the extremes of hot and cold weather they sometimes must endure and the six-day work weeks during the peak season. He said the council prefers that workers do not have relatives in New England because, in the past, some workers with family have been less reliable.

"We end up paying transportation for workers," said Young. "Quite often, workers with relatives in the area don't stay through the contract."

Mr. SMITH. Thank you, Mr. Goldstein.
Mr. Holt.

**STATEMENT OF JAMES S. HOLT, SENIOR ECONOMIST,
McGUINNESS & WILLIAMS**

Mr. HOLT. Thank you, Mr. Chairman, and I wonder if I could have the same privilege of the light that Mr. Goldstein had. [Laughter.]

My name is James Holt. I'm senior economist for the management labor law firm of McGuinness & Williams and the Employment Policy Foundation in Washington, DC, and I serve as a consultant on labor and immigration matters to the National Council of Agricultural Employers.

I'm an agricultural economist. I've spent my entire professional career dealing with labor, human resource, and immigration issues, primarily with respect to agriculture. I'm a consultant to most of the H-2A user associations in the United States, and I've worked with groups of farmers and ranchers in several States to establish H-2A programs.

The public policy question before the Congress and this committee is whether a workable program for admission of temporary and seasonal alien agricultural workers is in the national interest. The policy decision made will affect farmers and ranchers, farm and ranch workers, and other domestic workers in agriculture and related industries. It will also affect the level of domestic economic activity and employment, U.S. trade, and, of course, our ability to control illegal immigration. My testimony here today focuses on the economic and employment dimensions of this question.

As you know, hired labor is a necessary input in farming. It is a significant cost of production in all farm products, accounting for \$1 of every \$8 of farm production expenses across the board. But it's particularly significant as an input and cost factor in the production of fruits, vegetables, and horticultural specialties, the crops we define as labor-intensive, where hired labor costs comprise 40 percent or more of total production costs. These labor-intensive commodities are the fastest growing sector of U.S. agriculture. Fruits, vegetables, and horticultural specialties accounted for more than \$23 billion in agricultural sales in 1992, a 32-percent increase from the agricultural census just 5 years earlier.

All agricultural commodities, including labor-intensive commodities, now trade in world markets. Both U.S. imports and exports of these commodities have increased substantially in recent years. On the import side, the value of U.S. imports of fresh and prepared fruits and vegetables more than doubled in real terms between 1980 and 1990, to nearly \$3 billion. In the fresh market alone, 15 percent of fruit and 7 percent of the vegetables consumed in the United States in 1992 were imported. On the export side, the share of U.S. agricultural exports accounted for by vegetables, fruits, and nuts and their preparations nearly doubled to 12 percent of the total between 1980 and 1990.

The availability of adequate seasonal labor for farm production has enabled U.S. agricultural producers to expand production of labor-intensive commodities in the United States and to participate in the growth of United States and world markets for these com-

modities, and this is important. This expansion has, in turn, created thousands of additional jobs on farms and in upstream and downstream occupations dependent on the production and handling of farm products. A shift in production of farm commodities from the United States to foreign producers will on average eliminate about three times as many nonfarm jobs as farm jobs.

Effective immigration control that includes verification of the authenticity of work authorization documents will significantly reduce the seasonal labor supply currently available to American farmers. Employment of U.S. workers cannot be expanded to replace the alien labor supply displaced by current immigration proposals at costs that will enable the current level of U.S. agricultural production to be maintained in competitive world markets. Instead, the economic system will reallocate production from labor-short producers in the United States to producers in other countries with adequate labor. This reallocation will continue until the U.S. market share of labor-intensive commodities has declined to the level where the availability of U.S. labor can meet the remaining need at approximately current farm wages and other production costs, and U.S. producers are again competitive in world markets. And in my written statement I've elaborated on that in considerable detail.

This will result in a lower level of U.S. production, but it will not raise U.S. farm wage rates. Reduced U.S. agricultural production will reduce U.S. employment in the upstream and downstream activities supported by that farm production.

Thus, the end result of a failure to provide a legal temporary alien worker admission program for U.S. agriculture that works will be to reduce U.S. farm production and agribusiness employment with little or no change in domestic farm worker employment or wages.

In this scenario, the desirable public policy choice for the United States seems clear. Congress should provide a workable temporary agricultural worker program that provides sufficient safeguards to prevent depressing U.S. farm wages and labor standards below those that prevail in the current competitive market and that provide sufficient control to prevent the program from becoming an avenue for illegal immigration, but that otherwise provides ready access to adequate farm labor at competitive costs. This can be done.

Thank you very much.

[The prepared statement of Mr. Holt follows:]

PREPARED STATEMENT OF JAMES S. HOLT, SENIOR ECONOMIST, MCGUINNESS & WILLIAMS

Mr. Chairman, My name is James S. Holt. I am Senior Economist with the management labor law firm of McGuinness & Williams and the Employment Policy Foundation in Washington, D.C. I serve as a consultant on labor and immigration matters to the National Council of Agricultural Employers, a national association of growers and agricultural organizations interested in agricultural employment and labor issues.

I am an agricultural economist, and have spent my entire professional career dealing with labor, human resource and immigration issues, primarily with respect to agriculture. I served 16 years on the agricultural economics faculty of The Pennsylvania State University, and for the past 16 years I have been consulting and doing research here in Washington, first in private practice, then in partnership with Harris Miller, and since 1991 with McGuinness & Williams.

I originally became involved with the H-2A program while I was still on the Penn State faculty, when I was requested by the Labor Department to undertake studies

and testify concerning proposed changes in the predecessor H-2 program. Since that time I have done technical consulting with most of the current H-2A user associations and I have assisted groups of growers in several states to form associations and use the H-2A program including the Texas Ranchers Labor Association in your district. I was the technical consultant to H-2 employers in attempting to streamline and make the H-2 program more workable during Congressional consideration of IRCA. I have conducted numerous prevailing wage and practice surveys and have served as an expert witness in H-2a litigation on behalf of agricultural employers. Thus I have experienced the H-2 and H-2A program from the perspective of long-time experienced users and from the perspective of new employers attempting to access the program.

When immigration reform began to emerge as a national issue again last year, I and my colleagues Kenneth Deavers, now Chief Economist with the Employment Policy Foundation, and until January 1, 1995, Administrator of the Economic Research Service of the U.S. Department of Agriculture, began examining the domestic employment impacts of a reduction in the seasonal agricultural labor supply to U.S. agricultural producers. My testimony today is based on that work, and I want to acknowledge the collaboration of Ken Deavers, who is unable to be here today.

The public policy issue before the Congress is whether a workable program for admission of temporary and seasonal agricultural labor is in the national interest as an integral part of the reform of illegal immigration. How will such a policy impact domestic farmworks, other domestic workers (including farmers) in agriculture and related industries, the level of domestic economic activity, U.S. trade, and, of course, our ability to control illegal immigration? All these important questions are interrelated. The policy choice the Congress makes with respect to admission of temporary and seasonal foreign agricultural workers will affect them all, whether or not Congress takes those effects into account. I believe we must view the issue comprehensively, and that we must view it in terms of today's economic realities.

SUMMARY STATEMENT OF THE ECONOMIC IMPACT OF A TEMPORARY AGRICULTURAL WORKER PROGRAM ON THE U.S. ECONOMY

Let me, in a few paragraphs, try to summarize my conclusions:

Hired labor is a necessary input in farming. While it is a significant cost of production in all farm products, it is particularly significant as an input and cost factor in the production of fruits, vegetables and horticultural specialties, the commodities we define as "labor intensive". These labor intensive commodities are a significant component of U.S. agricultural production, in fact they are the fastest growing sector of U.S. agriculture.

All agricultural commodities, including labor intensive commodities, now trade in world markets. Both U.S. imports and exports of these commodities have increased substantially in recent years, and now constitute a significant component of our agricultural trade. The availability of adequate seasonal labor for farm production has enabled U.S. agricultural producers to expand production of labor intensive commodities in the United States and participate in the growth of U.S. and world markets for these commodities. This expansion has, in turn, created thousands of additional jobs on farms and in the "upstream" and "downstream" occupations created by the production and handling of farm products.

Effective immigration control that includes verification of the authenticity of work authorization documents, will significantly reduce the seasonal labor supply currently available to American farmers. Employment of U.S. workers can not be expanded to replace the alien labor displaced by current immigration control proposals at costs that will enable the current level of U.S. agricultural production to be maintained in competitive world markets. Instead, the economic system will reallocate production from labor-short producers in the U.S. to producers in other countries with adequate labor, until the U.S. market share of labor intensive commodities has been reduced to the level where U.S. producers are again competitive in world markets. This will result in a lower level of U.S. production, but approximately the same level of U.S. farm wages and commodity production costs, as before the adjustment. The reduced level of U.S. agricultural production will also reduce concomitant employment in the upstream and downstream activities supported by that production. Thus, the end result of a failure to provide a legal temporary alien worker admission program for U.S. agriculture will be to reduce U.S. farm production and agribusiness employment, with little or no change in domestic farmworker employment or wages.

In this scenario, the desirable public policy choice for the U.S. is clear. We should provide a temporary agricultural worker program that provides sufficient safeguards to prevent depressing U.S. farm wages and labor standards below those that prevail

in the current competitive market, and that provides sufficient control to prevent the program from becoming an avenue for illegal immigration, but that otherwise provides ready access to adequate farm labor.

In the remainder of this statement I will elaborate on and document the points made in the above paragraphs.

LABOR INTENSIVE COMMODITIES ARE A LARGE AND RAPIDLY GROWING SECTOR OF UNITED STATES AGRICULTURE

With rising incomes worldwide, and changes in consumers' tastes and preferences favoring fruits and vegetables, the demand for labor intensive agricultural commodities is growing rapidly. United States agricultural producers have participated in that growth. The 1992 United States Census of Agriculture reported that fruits, vegetables and horticultural specialties accounted for more than \$23 billion of agricultural sales in 1992, a 32 percent increase from that reported in the previous agricultural census five years earlier.¹ Most economists expect demand for labor intensive agricultural commodities to continue a strong growth pattern.

Although there is no hard evidence for this, many agricultural economists agree that the availability of labor, especially alien labor illegally entering the United States, has been an important factor facilitating the growth in U.S. labor intensive agricultural production. The U.S. has, in fact, had a *de facto* alien worker program, albeit one that was uncontrolled and unregulated. As production of labor intensive commodities has expanded, the expansion has undoubtedly been in areas of well-suited land resources where the available labor supply had limited expansion and in areas more remote from available domestic labor supplies. Such production could only develop if there was a supply of seasonal labor willing to migrate into the area to perform the seasonal labor-intensive tasks. Seasonal alien migration, including many illegal entrants, met that need.

U.S. PRODUCERS OF LABOR INTENSIVE COMMODITIES COMPETE FOR MARKET SHARE IN WORLD MARKETS FOR THESE COMMODITIES

Until recently, U.S. domestic producers of labor intensive commodities, especially fresh commodities, were relatively protected from foreign competition in the U.S. domestic market by the difficulty and high cost of shipping perishable commodities. Export markets for these commodities were limited by these factors, and by an extensive array of trade restrictions and protective barriers. Both the technological constraints and trade barriers to international competition in labor intensive agricultural commodities have fallen away in recent years, and freer trade is clearly a continuing trend. This has increased competition from foreign producers in domestic markets, but has also opened up opportunities for U.S. producers in export markets. An increasing proportion of the expansion in labor intensive agriculture in the United States is for the export market.

The value of U.S. imports of fresh and prepared fruits and vegetable more than doubled in real terms between 1980 and 1990, to nearly \$3 billion.² In the fresh market alone, 15 percent of fruits (excluding bananas), and 7 percent of vegetables consumed in the U.S. in 1992 were imported. On the other hand, U.S. exports of fresh and prepared fruits and vegetables have also shown strong growth during this period. In fact their share of the value of U.S. agricultural exports nearly doubled to approximately 12 percent by 1990. By 1992, exports of vegetables, fruits and nuts and their preparations exceeded the export value of feed grains and wheat, and were nearly as large as oilseeds. These data indicate that the competitiveness of U.S. producers of labor intensive commodities is increasingly significant to the overall trade performance of U.S. agriculture, and it also clearly demonstrates that U.S. producers are in direct competition with their overseas counterparts in both U.S. and foreign markets.

HIRED LABOR IS ONE OF THE MOST IMPORTANT AND COSTLY INPUTS IN U.S. AGRICULTURE, AND A SIGNIFICANT FACTOR IN AGRICULTURE'S COMPETITIVENESS

U.S. agricultural production, even most processes in "labor intensive" crops, are highly mechanized. Nevertheless, hired labor costs are a significant proportion of farm production expenses generally. The 1992 Census of Agriculture reported that 690,000 farms hired labor directly and nearly 240,000 incurred contract labor ex-

¹ 1992 Census of Agriculture, Bureau of the Census, U.S. Department of Commerce, Vol. 1, Part 51, U.S. Summary (Oct. 1994).

² This paragraph is based on unpublished data from the Economic Research Service, U.S. Department of Agriculture.

penses. Hired and contract labor expenses averaged 11.7 percent (one of every eight dollars) of farm production expenses for all U.S. farms.³

What makes a commonly "labor intensive" is that its production involves one or more manual-labor-using steps in an otherwise generally mechanized production process. This results in hired labor costs for the commodity being a much larger percentage of total production costs than for other commodities. In the 1992 Census of Agriculture, hired and contract labor costs accounted for 40 percent of total production costs on fruit and nut farms, 37 percent of vegetables farms, and 45 percent on horticultural specialty farms.⁴ In some individual commodities the percentage is even higher. Clearly the availability and cost of labor have a major impact on the profitability of these farms and on the production decisions of their operators.

THE GROWTH IN LABOR INTENSIVE AGRICULTURAL PRODUCTION HAS CREATED TENS OF THOUSANDS OF ADDITIONAL JOBS IN AGRICULTURE AND IN UPSTREAM AND DOWNSTREAM OCCUPATIONS

The public policy debate on temporary alien agricultural workers often focuses only on the occupations in which aliens are employed, and overlooks the fact that although some seasonal manual field jobs may be held by aliens, employment in labor intensive agriculture, and employment created by labor intensive agricultural production, extends far beyond these manual field jobs. Policy analysis should properly take into account all the employment affected by the policy.

According to USDA statistics, farming accounted for only 1.1 percent of U.S. gross domestic product (GDP) and about 1.6 percent of total U.S. employment in 1992.⁵ However, the food and fiber sector accounted for 15.7 percent of GDP, and 18 percent of total employment. Farming is only one part of the interrelated linkage of industries that comprise the food and fiber sector, but it is the engine that drives the economic activity and employment in a significant portion of that sector.

Farmers purchase inputs and services to carry out agricultural production from so-called "upstream" industries. USDA estimates that every dollar of GDP generated by farming creates an additional dollar of GDP in upstream activities.⁶ Farmers sell products to "downstream" industries. These industries transport, pack, process, store, manufacture, distribute, retail, consume or export farm products. USDA estimates that about 8 dollars of U.S. GDP in downstream activity is generated by every dollar of GDP generated in farming. And the importance of these upstream and downstream activities in growing. USDA estimates that inputs purchased by farmers increased 59 percent in real terms and downstream activities increased by 87 percent in real terms between the early 1960's and the early 1980's.⁷

Total employment in the food and fiber sector accounts for 18 percent of U.S. employment. Some components of this employment would be relatively unaffected by a shift in market share of production from U.S. to foreign producers, namely employment in wholesale and retail trade and foodservice. But approximately 40 percent of food and fiber sector employment, or 8 percent of total U.S. employment, is potentially affected by where farming production takes place. Put another way, about 3 jobs outside of farming are dependent on each job in farming. A shift in production of farm commodities from U.S. to foreign producers will not only eliminate farm jobs, but on average about three times as many nonfarm jobs.

EFFECTIVE IMMIGRATION CONTROL THAT REQUIRES VERIFICATION OF EMPLOYMENT AUTHORIZATION DOCUMENTS WILL SIGNIFICANTLY REDUCE THE SUPPLY OF LABOR FOR U.S. AGRICULTURE

Virtually everyone who is involved in the agricultural labor market or has studied it, has concluded that very little has changed since 1986, and that a significant proportion of the agricultural work force is comprised of illegal aliens working with fraudulent documents. Understandably, that is a difficult phenomenon to research, but some estimates are available.

In response to a mandate in IRCA, the U.S. Department of Labor conducts a National Agricultural Worker Survey (NAWS) annually, as a part of which workers are

³ 1992 Census of Agriculture, Bureau of the Census, U.S. Department of Commerce, Vol.1, Part 51, U.S. Summary (Oct. 1994)

⁴ Ibid.

⁵ Lipton, Kathryn L. and William Edmonston, "Linking Agriculture to the Economy", Chices, Fourth Quarter, 1003.

⁶ Harrington, David et al, "Agriculture's Link to the National Economy—Income and Employment", Agriculture Information Bulletin No. 504, Economic Research Service, U.S. Department of Agriculture, October 1986.

⁷ Ibid.

asked to self-identify their legal status. Data synthesized from various NAWS reports show a consistently increasing proportion of unauthorized workers since the survey began. By 1993-94 the percentage was 25 percent.

Data from the NAWS studies indicate that the proportion of undocumented workers has increased by about 4 to 5 percentage points annually since 1989. This is roughly consistent with a Commission on Agricultural Workers estimate of "an annual increase of unauthorized worker in the order of approximately 6 percent".⁸ The NAWS estimate of 25 percent undocumented workers in 1993-94 would therefore extrapolate to an estimate of about 30 percent undocumented or fraudulently documented workers in the current U.S. agricultural workforce.

Anecdotal evidence based on INS audits of employer's I-9 forms reported by employers suggests that the self-identified NAWS data is probably the lower limit of the actual percentage of illegal aliens in the agricultural work force. In employer audits INS has identified as many as 50 to 70 percent of documents offered to complete form I-9 as fraudulent. While experience has shown that some of these workers are actually work authorized, and either the INS's data base is in error or the worker is working under false documents for other reasons than having entered the United States illegally, the proportion of workers who are actually illegal has often exceeded 30 percent. These studies, coupled with field experience, clearly shows that an effective system for verifying employment authorization combined with effective enforcement of employer sanctions, will significantly reduce the supply of temporary and seasonal labor for U.S. agriculture.

EMPLOYMENT OF U.S. WORKERS CANNOT BE EXPANDED TO REPLACE THE DISPLACED ALIEN LABOR AT A COST WHICH WILL MAINTAIN THE CURRENT LEVEL OF U.S. AGRICULTURAL PRODUCTION

Won't growers be forced to raise wage offers to domestic farmworkers and U.S. residents not now employed to attract additional labor in the absence of aliens? This, of course, is the rationale for many people's opposition to a temporary foreign worker program, and is at the core of the public policy question raised by "guestworker" programs. If the answer to that question were "yes" we would have the best of all possible worlds. Growers could continue in production, more U.S. residents would be employed and farmworker wages would be higher. Unfortunately, however, the answer to the question is "no". Both economic theory and the real world tell us that. I refer to the economic theory in the next subheading. Here I will review the practical reasons why the U.S. workforce can not fill the void.

First it is useful to review the data on farm wage rates. Contrary to common perception, farm work is not minimum wage work. USDA reported the U.S. 1994 average hourly earnings for nonsupervisory field workers was \$6.02 per hour.⁹ For workers paid by piece rate, U.S. average hourly earnings were \$7.02 per hour. When they are working, the weekly hours of farmworkers are generally comparable to those of nonfarm workers. For example, in California, where one quarter of all the field workers in the Nation are employed, the 1994 average hourly earnings for non-supervisory field workers was \$6.51 and the average hours of work per week (for those who were working) was 41.5 hours.¹⁰

Then why don't minimum wage workers abandon their jobs and do farm work at a 40 percent raise? The answer undoubtedly lies in the other characteristics of seasonal farm work. Seasonality itself is foremost among these. While field work pays relatively well on the average when there is work, it is by definition seasonal. Most U.S. workers need and prefer more reliable year round work, and many are obviously willing to take less per hour in order to secure more stability of employment. A second unattractive feature of agricultural work is that many jobs entail physical labor under adverse environmental conditions of heat, cold, sun, rain, etc. It is work that many Americans (likely including those of us presenting and listening to this testimony) would be physically incapable of doing on a sustained basis, and that most of the rest would prefer not to do if there are better alternative available. Thirdly, and in my view probably the most important factor, is that many seasonal farm jobs are not located within normal commuting distance of most workers. In order to take these jobs workers have to become temporary migrant farm workers. Although there is no data to substantiate this, I believe that this is especially characteristics of the areas where expansion in production of labor intensive commod-

⁸ Report of the Commission on Agricultural Workers, p. 89, Washington D.C., November, 1992.

⁹ Farm Labor, National Agricultural Statistics Service, U.S.D.A. Sp Sy 8 (11-94)

¹⁰ California Agricultural Employment and Earnings Bulletin, Annual Averages 1994, Labor Market Information Division, California Employment Development Division, Sacramento, CA. July, 1995

ities has more recently occurred. Not only have we stigmatized migrant farm work in this country, we have spent literally billions of dollars of public money trying to reduce domestic migrancy and "settle out" migrant farm workers. It is not surprising, therefore, that there is a "shortage" of willing U.S. migrant farm workers. Aliens, on the other hand, are willing to migrate, in fact are required to do so to get into the United States.

This should not leave you with the impression that U.S. residents will not do farm work. In fact, the best available data shows that more than 2 million U.S. residents currently do hired farm work at some time during the year.¹¹ The problem that we are discussing here is that because of the availability of alien labor, first under circumstances where it was not illegal for employers to employ these aliens, and more recently possessing documents that employers are legally obligated to accept, U.S. agricultural production has expanded beyond the capacity for the U.S. resident work force to meet its needs. That expansion has, of course, been beneficial to the U.S. It has expanded U.S. economic activity and created additional jobs for U.S. residents. But it has left U.S. agriculture dependent on an alien labor supply.

IN THE ABSENCE OF A WORKABLE TEMPORARY ALIEN AGRICULTURAL WORKER PROGRAM, IMMIGRATION CONTROL, IF IT IS EFFECTIVE, WILL LEAD TO A REDUCTION IN U.S. PRODUCTION OF LABOR INTENSIVE COMMODITIES AND A REDUCTION IN CONCOMITANT U.S. EMPLOYMENT

I have appended as an attachment to this testimony an analysis I prepared with my colleague Kenneth L. Deavers. This analysis shows why, in a competitive commodity market, a reduction in the supply of labor to one producer group (in this case those in the U.S.) will lead to a shift in market shares to other producer groups (in this case producers outside the U.S.) without significantly raising U.S. farm wages. The reduction in production of U.S. production of labor intensive agricultural commodities will also reduce derivative employment for U.S. workers in farming and in upstream and downstream agribusiness occupations.

This analysis shows that the alternatives facing policy makers in evaluating a temporary alien agricultural worker program for U.S. agriculture do not involve weighing benefits to one group of U.S. residents (U.S. farmers and agribusiness workers) against costs to another group of U.S. residents (U.S. farmworkers and potential farmworkers). Rather, the costs of restricting the labor supply to U.S. agriculture will fall on U.S. farmers and U.S. workers in allied industries, while the benefits will accrue largely to producers and workers outside the U.S.

A THEORETICAL ANALYSIS OF THE ECONOMIC IMPACT OF A REDUCTION IN THE SUPPLY OF SEASONAL AGRICULTURAL LABOR¹

Economic theory demonstrates that reducing access to alien labor will only increase domestic farmworker wages in a closed economy. In an economy open with free trade such as exists in the United States, the domestic farm wage and employment level is established by world market prices. Reducing access to alien labor will reduce U.S. producers' world market share, but will leave U.S. farmworker employment and wages largely unaffected.

The central public policy argument for a legal program for the continued admission and employment of aliens in seasonal agricultural jobs in the U.S. is that the availability of alien labor expands U.S. employment. Because aliens are already a significant portion of the U.S. seasonal agricultural work force, reducing the supply of seasonal agricultural labor to U.S. producers will reduce U.S. production of labor intensive agricultural commodities and shift market shares for these commodities from U.S. to foreign producers. It will have little or no impact on employment and wages for U.S. farm workers. The reduction in U.S. production of labor intensive agricultural commodities will, however, reduce derivative employment for U.S. workers in farming and in upstream and downstream agribusiness occupations. Thus the alternatives confronting policy makers in evaluating a guestworker program for U.S. agriculture do not involve weighing benefits to one group of U.S. residents (U.S. farmers and agribusiness workers) against costs to another group of U.S. residents (U.S. farmworkers). The "costs" of restricting the labor supply to U.S. agriculture will fall on U.S. farmers and U.S. workers in allied industries. The "ben-

¹¹Hired Farm Work Force of 1987, Economic Research Service, U.S.D.A., Washington, D.C. The data reported in the Hired Farm Work Force Reports are obtained from a special supplement to the Bureau of the Census's Current Population Survey.

¹Prepared by Dr. James S. Holt, Senior Economist, McGuinness & Williams, and Kenneth L. Deavers, Chief Economist, Employment Policy Foundation, both of Washington D.C.

efits" of restricting the U.S. seasonal agricultural labor supply will accrue largely to producers and workers outside the U.S.

The economic analysis presented here begins with the fact that markets for fresh and processed fruits and vegetables and other labor intensive agricultural commodities are now international markets in which producers compete worldwide for market share. This competition determines product prices and levels of production in all producing countries and consequently levels of employment and wage rates in each producing country. If the United States were a closed economy, without trade, a policy of restricting the supply of labor to U.S. producers would have quite different results than those presented here.

Until recently, the U.S. markets for fresh fruits and vegetables and other perishable products such as cut flowers were sheltered by technological barriers to trade resulting from the perishability of these commodities as well as by specific trade and tariff barriers. However, both the technological barriers to transporting perishable commodities and the trade barriers have diminished markedly in recent years, and the trend toward freer trade continues apace. In addition, both U.S. and worldwide demand for labor intensive commodities has increased markedly due to changing consumer tastes and rising worldwide incomes. The result has been dramatic increases in international trade, and in U.S. imports and exports of labor intensive commodities.

The effect of international competition on U.S. domestic production and farm employment and wages can best be illustrated by first analyzing an economy where such competition does not exist. In a closed economy, i.e. one in which there is no international trade in labor intensive agricultural commodities, the quantity of production and domestic commodity price levels are established entirely by the interaction of domestic supply and demand. This can be illustrated by the classic demand and supply curves shown in Figure 1. (This and all other figures cited are at the end of this paper.)

In Figure 1, SS represents the domestic supply of labor intensive commodities. The slope of SS indicates that at higher prices domestic producers will find it profitable to produce more, and at lower prices they will produce less. DD represents domestic demand for the commodity. At lower prices, consumers will buy more, and at higher prices they will buy less. The intersection of demand and supply determines the quantity which will be produced (q), and the domestic price for the commodity (p).

Figure 1 can also represent the demand and supply for domestic agricultural labor. The demand for labor is derived from the demand for the products that the labor produces. At lower wages producers will employ more labor and at higher wages they will employ less. Similarly, at lower wages, the domestic labor market will supply less labor to agricultural producers, and at higher wages it will supply more.² The intersection of labor supply and demand determines the equilibrium wage (w) and the farmworker employment level (e).

In the closed economy of Figure 1, if the supply of labor is reduced (e.g. by removal of alien labor), this creates a new supply curve, SS_1 . There are now fewer people in the labor force and available to work at all wage levels. Assuming the reduction in the labor supply does not change the demand for agricultural products, competition among agricultural producers will raise wages, but the higher wage will lead to a reduction in the amount of labor employed and a reduction in the quantity of product produced. In Figure 1 the equilibrium wage would rise from w to w_1 , while the equilibrium employment level would be reduced from e to e_1 .

²There has been a great deal of speculation, and some empirical research, on the question of how the domestic labor force will respond to increases in agricultural wages, i.e. the wage elasticity of agricultural labor supply, or the slope of the labor supply curve SS. Although we are treating agricultural labor in the aggregate in this analysis, it is likely that the labor market will respond differently to different kinds of farm work opportunities. The farm work opportunities held by aliens tend to be seasonal and located away from concentrations of population. It is likely that to secure significant increases in domestic labor in these jobs would require large increases in wages to induce domestic workers not only to give up leisure, welfare benefits or regular employment, but also to induce them to leave their families, or to temporarily relocate both themselves and their families, to the localities where seasonal agricultural work is available. In other words, wage increases would have to be substantial enough to induce domestic workers to become migrant, seasonal farm workers. Given the long term trend of U.S. workers away from migratory farm work, and the decades of Federal labor force policy intended to reduce migrancy, skepticism about the number of workers who would be willing to make such a decision within a reasonable and relevant wage range seems justified. Therefore it is thought that the domestic supply curve for seasonal agricultural field labor is highly "inelastic", or, in graphic terms, more nearly vertical. An inelastic supply of labor means that relatively large increases in wages would induce only relatively small increases in labor.

In a closed economy, such as portrayed in Figure 1, the withdrawal of workers from the domestic labor market increases the equilibrium wage for those remaining in the labor market. It is this farmworker wage enhancement that opponents of a guestworker program argue will result if effective control of illegal immigration occurs and guestworkers are not permitted.

The fundamental flaw in this reasoning is the assumption that farmworker wages are set in a closed economy. In fact, they are established as part of an international market place for the commodities they produce.

Introducing the fact of international competition between U.S. and foreign agricultural producers of labor intensive commodities, alters the above analysis in ways that produce fundamentally different conclusions about changes in domestic farmworker wages and employment resulting from changes in the supply of labor to U.S. producers. It will be seen that when the assumption of a closed economy is relaxed, virtually all of the adjustment resulting from reducing (or augmenting) the existing supply of labor to domestic producers (which includes large numbers of alien workers) occurs in the level of domestic production, and very little occurs in the level of wages or employment of U.S. workers. However, the reduced domestic agricultural production resulting from a reduction in the labor supply also reduces ancillary domestic employment in farming and in upstream and downstream agribusiness occupations.

The mechanism by which this result obtains is the following. If the supply of labor to U.S. producers is restricted, this will cause a tendency for the U.S. farm wage to rise and the U.S. Demand for farm labor to decline, as illustrated in the closed economy example.³ This tendency for wages to rise will create a tendency for domestic production to decline and for domestic commodity prices to rise. However, in an open economy this tendency for domestic commodity prices to rise will induce producers from outside the U.S. to ship more product into the now more lucrative U.S. market. This movement of foreign product into the U.S. market will continue as long as the tendency for U.S. product prices to rise continues, and will stop only when the tendency for farm wages to rise has been mitigated. The tendency for farm wages to rise will be mitigated only when there has been a sufficient shift in U.S. market share from domestic to foreign producers so that U.S. production is at the level where the now-reduced supply of U.S. labor can support the now reduced level of domestic agricultural production at approximately the same production costs (and U.S. farm wage rates) as prevailed before the domestic labor supply was reduced.⁴

This can be illustrated graphically by returning to the supply and demand curves for labor intensive agricultural commodities. In Figure 2, DD and SS again represent the demand and supply for the labor intensive commodities, and p_d and q_d represent the domestic equilibrium market price and quantity produced. In a world economy however, price will be established by world supply and demand relationships. If the world price for labor intensive commodities (delivered into the U.S. market) is lower than the domestic equilibrium price, for example p_{w1} , then U.S. producers will supply only q_{d1} while consumers will demand q_{l1} . The difference between the domestic production of q_{d1} and domestic consumption of q_{l1} will be imported. Similarly, if the world price is above the domestic equilibrium price, for example p_{w2} , then domestic consumers will demand less (q_{d2}) than domestic producers will supply (q_{l2}), and the difference will be exported.

The effect of international competition is to present the domestic economy with a "kinked" commodity supply curve. If the world commodity price is p_{w1} , for example, the supply curve facing the domestic economy becomes SS_w as portrayed in Figure 3, i.e. the supply to U.S. consumers becomes infinitely elastic at the world price.⁵

The effect of the international market for labor intensive commodities on domestic farm labor demand can be illustrated with reference to Figure 4. The supply curve

³ Although the analysis here is cast in terms of rising labor costs, in an open economy a rise in the cost of any factor will have the same result, i.e. to shift market share from the producers whose costs have risen to other producers.

⁴ This discussion is cast in terms of increased imports reducing domestic market share for U.S. producers. In some important labor intensive agricultural commodities, the U.S. is an exporter. However, exactly the same argument and analysis is applicable in that case. The tendency for U.S. production costs to rise will shift foreign market share from U.S. to other producers until that tendency is mitigated.

⁵ If the volume of U.S. consumption is sufficient to affect world market price, then instead of a horizontal supply curve, the supply curve would be upward sloping but more elastic (i.e. less steep) than the domestic supply curve. The higher the proportion U.S. consumption is of total world consumption of the commodity, the more the supply curve is likely to slope upward. However, within the relevant range for this analysis, the supply of commodity to U.S. consumers is assumed to be infinitely elastic at the world equilibrium price.

SS_w in Figure 4 is the same supply curve shown in Figure 3. The dashed supply curve SS is the supply curve of domestic producers that would have prevailed in the absence of world supply. At production levels less than q , domestic price will be below world price and the domestic market would be supplied by domestic producers. Within this range, producers would produce more as price rose, and would require more labor to produce it, which would, in turn bid up farm wage rates. Once domestic production reaches q , however, additional supply would come from imports rather than domestic production, since to induce more domestic production would require a higher commodity price than the world price of p_w . The only way that additional production in excess of quantity q could be forthcoming from domestic producers is if something happened to shift the domestic supply curve to the right, e.g. to SS_1 or SS_2 . Commodity price would remain the same at p_w but domestic production would increase q_1 or q_2 . In fact, that is what has occurred in the United States. As alien labor has entered the U.S. and found employment in farming, it has shifted the U.S. supply curve to the right. It has facilitated the expansion of domestic agricultural production at world commodity prices.

The decision now before policy makers in the agricultural guestworker question is whether to reduce or eliminate the availability of alien labor. A decision to reduce the availability of labor will cause the supply curve to shift back to the left, toward SS . This will reduce the quantity of product produced in the U.S. But U.S. producers will still face the same world market price, and therefore will not be able to raise their prices. The domestic farm wage level will therefore remain unchanged, since product prices cannot rise. If government policy were, in fact, successful in removing all alien labor, it could push the domestic supply curve all the way back to SS . But in the absence of trade restrictions that would force a change in commodity price, it can not move producers up and down on the supply curve. In other words, in the absence of trade restrictions or direct legislation, government policy cannot affect domestic farmworker wage levels, which are established by world prices for similar commodities delivered into U.S. markets.

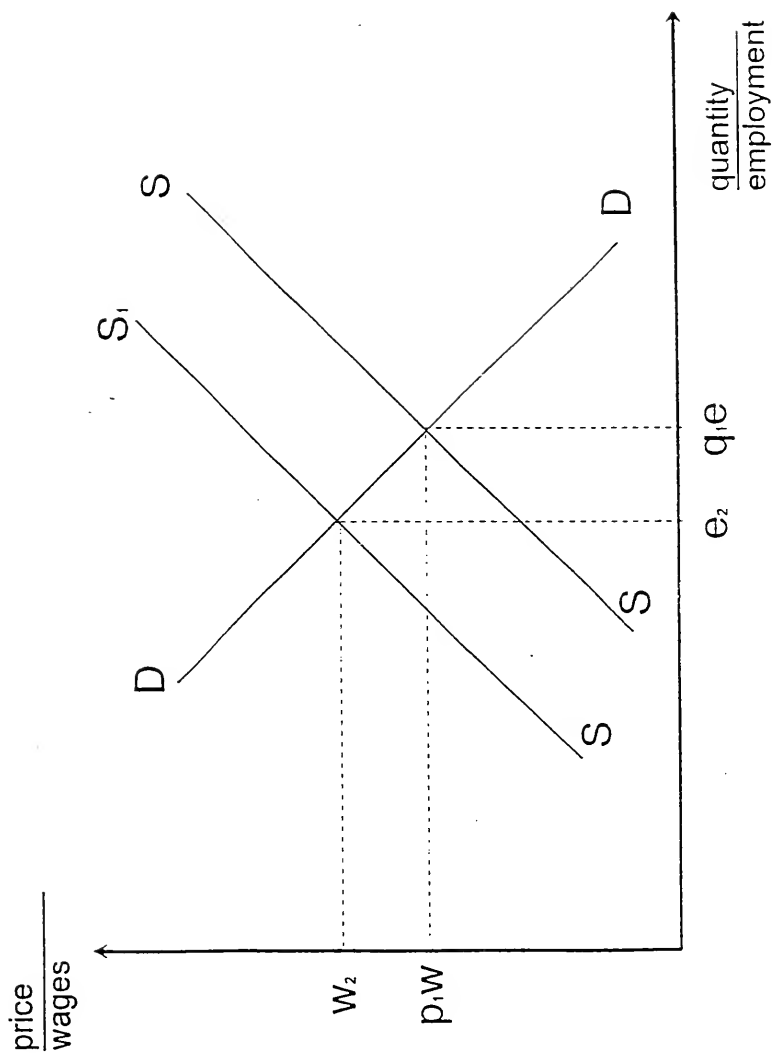


Figure 1

Figure 2

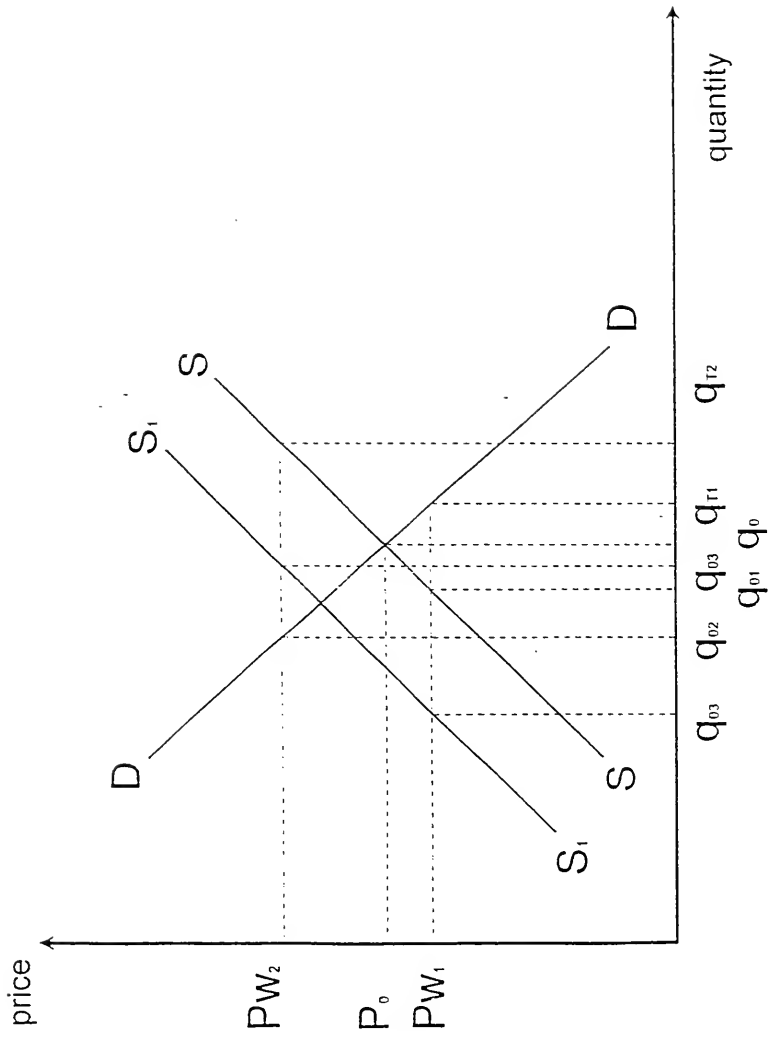


Figure 3

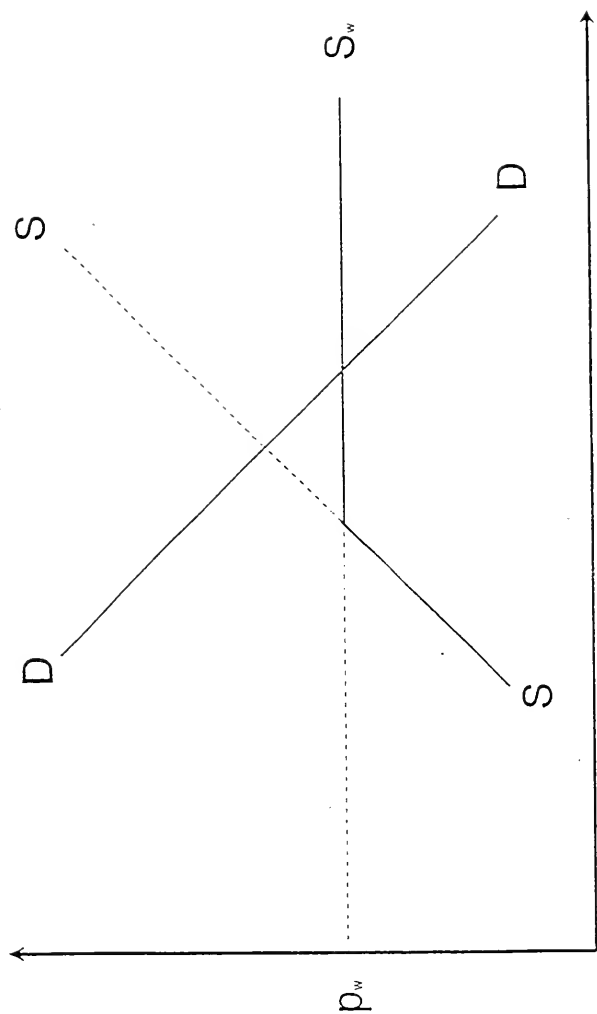
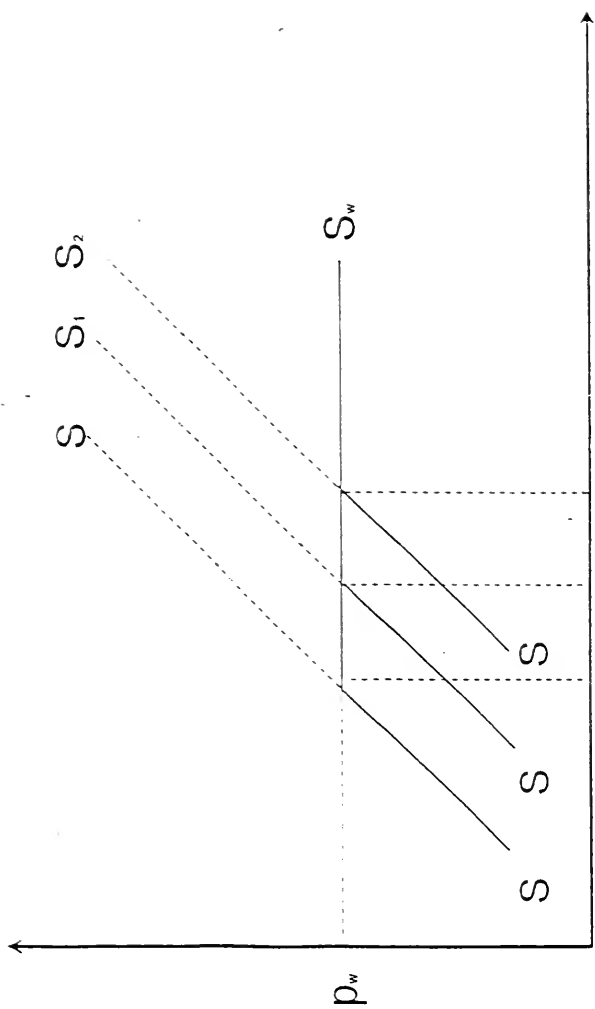


Figure 4



Mr. SMITH. Thank you, Mr. Holt.
Mr. Maltsberger.

STATEMENT OF W.A. MALTSBERGER, RANCHER, TEXAS

Mr. MALTSBERGER. Good afternoon, Mr. Chairman and members of the subcommittee. My name is W.A. Maltsberger. My family and I operate a cattle ranch in LaSalle County, TX. I'm appearing here today to tell you about my experience using the H-2A program and to try to persuade you that the program must be radically reformed if it is to meet the temporary and seasonal needs of ranchers like myself.

My testimony is based on my personal experience. I have filed applications for H-2A labor certifications for the past 5 years. Ultimately, I was approved each year, but to get this approval I have spent literally hundreds of hours on the telephone, writing applications and letters of explanation, and filing two successful appeals of denials of labor certifications before administrative law judges.

Mr. Chairman, this is my file, 5 years of filing virtually identical labor certification applications [indicating]. You can see for yourself what a nightmare this program is. This 28 pounds of paper is only from one small rancher in southwest Texas. In addition, I have spent thousands of dollars of out-of-pocket costs.

Let me give you some background on the Maltsberger ranch. My family came to Texas in the 1850's. My grandfather moved his ranching operation to LaSalle County in the early 1880's. We have been involved in the open range production of livestock in south Texas for around 140 years. The permanent workforce on our ranch consists of myself, my wife, and son, and two other full-time employees. In addition, we need temporary workers to fill seasonable and unexpected need. Our ranch is historically dependent on Mexican labor. Twelve of our employees qualified for permanent resident visas under the legalization provisions of IRCA, but, by 1991, all but two of these workers had left the ranch.

In 1991, we experienced a severe drought, and I faced a critical need for additional hired labor to feed my cattle. I filed an application for emergency H-2A certification. The Department of Labor denied my request, forcing me to go through the 60-day waiting period to test the market for U.S. workers, even though the Texas Employment Commission had already recruited unsuccessfully for several months on my behalf. During the 60-day period, my family and my cattle were under extreme stress. The Labor Department did not find a single qualified worker willing to take the job, and we were certified.

In 1992, I again applied for H-2A certification. The Labor Department recruited not only in Texas, but in Louisiana, Arkansas, Oklahoma, and New Mexico. Again, no qualified worker was willing to take the job, and I was certified.

In 1993, I filed a virtually identical H-2A application. This time it was rejected on grounds that my needs were permanent rather than temporary. I demonstrated to the Labor Department that my employees work intermittently, usually from 6 to 8 weeks at a time, and then would return to Mexico to be with their families, but the Labor Department refused my application anyway.

I appealed the refusal to certify to an administrative law judge. I prepared and filed the appeal myself. The Labor Department's lawyers tried to dissuade me from going forward at every opportunity. They told me there was no chance an ALJ would rule in my favor and accused me of wasting their time and the taxpayers' money. Nevertheless, I persisted and the ALJ ruled in my favor, holding that my need was temporary.

In 1994, my H-2A application was again denied on the grounds that my need was not temporary. Again, I went through the difficult and time-consuming task of preparing the ALJ appeal. The case took an interesting turn. The administrative law judge was aware of another case in which permanent labor certification was denied on the grounds that the need was temporary even though the facts were very similar to mine. The administrative law judge asked the Department of Labor to address the apparent inconsistencies in its position in the two cases.

The ALJ again ruled in my favor. He said, and I quote, "The Solicitor's explanation of those two cases is not convincing since it addresses the outcome of the certifying officers' decision, but does not reconcile the conflicting reasoning the certifying officers used to reach those decisions." He went on to hold that my need was still temporary and ordered me to be certified. In my view, these two cases clearly show that the Labor Department will make whatever argument it needs to deny certification.

Incidentally, it's now 4 years and two ALJ appeals since I filed my first H-2A application. The Labor Department has not referred a single qualified worker willing to work on our ranch. You should also know that after each of my successful ALJ appeals the Labor Department's Wage and Hour Division conducted a top-to-bottom audit of my ranch. In both instances they found nothing wrong, but it is clear that those audits were retaliatory harassment.

Mr. Chairman, hearing what I've gone through and seeing this stack of paper, can you imagine thousands of ranchers having to go through this process? In the Texas ranching industry we have a labor shortage right now. When the reforms you are proposing go into effect, that shortage will become much larger. The current H-2A program is broken and must be reformed as you reform the control of illegal aliens. The Department of Labor must be removed from the role of gatekeeper. We need a simple, streamlined admission process that assures employers timely access to qualified workers under reasonable terms. The livelihoods of your ranching constituents depend upon it.

I thank you.

[The prepared statement of Mr. Maltsberger follows:]

PREPARED STATEMENT OF W.A. MALTSBERGER, RANCHER, TEXAS

Mr. Chairman, good morning Mr. Chairman and members of the Subcommittee and of the Agriculture Committee. My family and I operate a cattle ranch in LaSalle County near Cotulla in south Texas. I am appearing here today to tell you about my experience in trying to use the H-2A program to meet my need for intermittent temporary labor on my ranch, and to try to persuade you that the program must be radically reformed if it is to meet the temporary and seasonal labor needs of ranchers like myself.

I am a member of the Texas Ranchers Labor Association, a small association of Texas ranchers formed to help its members use the H-2A program. I am also a member of the Texas and Southwest Cattle Raisers Association. I am testifying here

today at the suggestion of the National Council of Agricultural Employers, of which I am not a member. Although I know that the Texas Ranchers Labor Association and the Texas and Southwestern Cattle Raisers Association have a deep concern about the potential impact of the reform of illegal immigration control and telephonic verification of documents on the availability of an adequate supply of labor for the livestock industry, and share my view that radical reform of the H-2A program is necessary, I want to emphasize that my testimony here today is my own.

The purpose of my testimony is three fold. First, I want you to know that there is a shortage *right now* of workers who are legally entitled to work in the United States and who are willing and able to do temporary and seasonal work. Secondly, this shortage affects not only the big growers of fruits and vegetables in California, Florida, and the other places you've heard about, but also cattle ranchers, sheep and goat raisers and other livestock producers operating family businesses like mine. Third, the H-2A program as currently structured is not working and must be radically restructured to remove the Labor Department from the role of gatekeeper and eliminate its ability to hamstring and frustrate the process of obtaining needed temporary and seasonal labor.

My testimony today is based on my personal experience. I have filed applications for H-2A labor certification for the past 5 years, most recently in March 1995. Ultimately I was approved each year. But to receive this approval, I have spent literally hundreds of hours of my own time on the telephone, writing applications and letters of explanation and filing two successful appeals of denials of labor certification before an Administrative Law Judge. Mr. Chairman, I have brought my file for 5 years of virtually identical labor certification applications, and associated correspondence, appeals, etc. so you can see for yourself what a profound nightmare this program is. I emphasize that this stack of paper is for only five years of virtually identical applications filed by me, a small rancher in southwest Texas. In addition I have had to spend thousands of dollars in out-of-pocket costs to secure these labor certifications.

I would like to begin recounting my experience with the H-2A program by giving you some brief background on the Maltsberger Ranch. My family came to Texas from Greene County, Tennessee in the 1850's and settled near San Antonio. My people gathered wild cattle from the open range and handled trail herds from Texas to Kansas and New Mexico. They raised and traded horses and mules from Mexico to Michigan.

My grandfather moved his ranching operations to LaSalle County, Texas in the early 1880's. My family worked and produced cattle, horses and other livestock on the open range. They homesteaded, patented and bought land in this area. We have been involved in the open range production of livestock in south Texas for around one hundred and forty years.

The permanent work force on our ranch consists of myself, my wife and son and two other full-time employees. In addition we need temporary workers to fill in the seasonal and unexpected needs. Our need for temporary help is unpredictable in amount, timing and duration and is often related to weather. In the past several years we have faced serious drought situations in Texas and I had to employ temporary labor to provide supplemental feed to our cattle and horses.

Our ranch has historically been dependent on Mexican labor. We got permanent resident visas for 12 of our employees under the legalization provisions of IRCA, but by 1991 all but 2 of these workers had left the ranch. In 1991, we experienced a severe drought in South Texas and I faced a critical need for additional hired labor to feed our cattle. I had learned about the H-2A program from the INS and the Texas Ranchers Labor Association and I applied for emergency H-2A certification because my cattle and horses were under severe stress. The Labor Department denied my emergency request and forced me to go through the full 60 day application process. The reason they gave was that they had to "test the market" for availability of U.S. workers. They did this even though the Texas Employment Commission had already been recruiting on my behalf for several months and came up with no workers. During this 60 day period my family and my cattle went through extreme stress. The Labor Department did not find a single qualified U.S. worker for our ranch, and we were eventually certified and brought in temporary workers from Mexico.

I want to make very clear to the Committee that I do not object to giving American workers preference for temporary and seasonal agricultural jobs. My request for emergency consideration on my 1991 H-2A application was supposedly denied so that the labor market could be tested. I am convinced that the real reason was to try to discourage me from using the H-A program, not to protect the jobs of U.S. workers. As I have already indicated, the Labor Department did not secure one U.S. worker for my ranch. But even if I had been granted the emergency certification

and then U.S. workers had been found, the U.S. workers' access to the jobs was fully protected by the H-2A regulations. Under the H-2A regulations, I was obligated, as are all H-2A employees, to employ all qualified U.S. workers who apply for my jobs during the first 50 percent of the period for which I am certified to employ H-2A aliens, even if I have already filled the jobs with alien workers. So the denial of my emergency application accomplished no purpose but to delay my access to H-2A workers and case me, my family and our horses and cattle needless suffering, hardship and financial distress.

In 1992, I again applied for H-2A certification. The Labor Department attempted to locate U.S. workers not only in Texas, but in Louisiana, Arkansas, Oklahoma and New Mexico. In spite of this not one single qualified U.S. worker was identified, and I was certified to employ H-2A workers.

In 1993, as I was again preparing my H-2A certification application, I was told off-the-record by a U.S. Department of Labor employee in the Dallas regional office that the office has been advised by the Washington DOL office to deny all third time applications for H-2A certification for ranch workers, no matter what the need or justification might be. Since I had no other options, I filed my application anyway. Sure enough, it was denied. The reason given for the denial was that my need for labor was "permanent" rather than "temporary". I attempted to demonstrate to the Labor Department that my workers worked intermittently, usually from 6 to 8 weeks at a time, and then would return to Mexico for several weeks or longer. I pointed out that although my intermittent need for workers occurred throughout that year, the workers did not work for an entire calendar year, but only for parts of the year. I also pointed out that the terms of the H-2A regulations required that I employ the H-2A workers a minimum of 75 percent of the work days covered by my labor certification, which actually required me to employ the workers a *greater* portion of the year than I really needed them, and made the jobs seem more "permanent" than they really were. Finally, I pointed out that after 2 years of intensive recruiting, the Labor Department has not found a single worker to fill my ranch jobs, and that without access to H-2A workers I would be out of business.

The Labor Department suggested that I solve the "problem" by filing two or more labor certification applications for parts of the year and then make "judicious use of extensions" to take care of my need. They also suggested that I should use the procedure for expedited certification under emergency procedures if I had an "unpredictable" need for workers. I argued that this suggestion would double the volume of paper work and cost for me to file two sets of applications, and it didn't change my need. The Labor Department could still argue that my need was "permanent", whether I filed one application or two. I also reminded the Labor Department that I had already tried to use the expedited procedures for emergency conditions and had been denied such procedures.

I appealed the refusal of DOL to accept my application on an Administrative Law Judge under the appeal procedures provided in the H-2A regulations I prepared and filed my appeal myself. The Texas Rancher Labor Association also filed a submission on my behalf as *amicus curiae*. The Labor Department's lawyer tried to dissuade me from going forward with the appeal at every opportunity, telling me there was no chance the ALJ would rule in my favor, and accusing me of wasting the taxpayers' money and the time of the involved government officials. In spite of all this harassment and intimidation, I proceeded. I should point out that these expedited ALJ appeals are based on a review of the record before the agency at the time the decision was made; they are not *de novo* proceedings. This means that the ALJ merely reviewed the same the record and justification I had already provided the Labor Department.

The ALJ ruled in my favor. In his opinion he noted that "considering the facts of this case and the extraordinary circumstances Maltsberger faces as a cattle rancher in south Texas (i.e., weather, labor, raising animals, dealing with predators, etc.), I find Maltsberger's argument more persuasive than those of the RA (U.S. DOL Regional Administrator)." The ALJ went on to say "the record indicates that Maltsberger has frequent, unpredictable need for *temporary* cattle ranch workers, and that in the past he has been unable to find U.S. workers who are ready, willing and able to perform the work (emphasis added)".

Filing this appeal, talking on the telephone to the DOL officials and lawyers and the ALJ, and writing responses to the Labor Department is fallacious arguments against me took me away from my ranch work for many hours over many days, causing me great hardship, not to mention anxiety for the future of my family's business. But the ALJ's grasp of my problem and his rejection of DOL's arguments and unworkable suggestions refreshed my faith in the ultimate ability of the Federal government to do the right thing. So you can imagine my disbelief when I was told, again off the record, by a DOL official "Don't be surprised if they (USDOL) re-

ject your application next year." It became very apparent to me then that some person or people in power in the U.S. Department of Labor were intent on denying me and other ranches in Texas the full use of the H-2A program which Congress had created to deal with shortages of agricultural labor.

Unfortunately, the prediction proved very accurate. I submitted my application for H-2A certification in 1994 only to have it sent back to me by USDOL without processing. The DOL regulations do not provide for returning applications without processing—only for acceptance or rejection. The significance of DOL's action is that it left me with no recourse. If they had rejected my application, I would have had the right to again appeal the action to an ALJ. However, by simply sending it back to me, I was without that recourse.

Although DOL had found a new way to word their argument for denying my application, it amounted to the same objection that had been rejected by the ALJ the proceeding year. Although my 1994 application was identical in all material respects to my previous three applications, DOL now said "it appears you want your application processed under special circumstances requiring the approval of special procedures which are not presently available for Cattle Ranch workers. Special procedures regarding the waiver of temporary/seasonal nature have only been approved by the Department of Labor for the occupations of shepherd . . ." I, of course, was not requesting "special procedures requiring the waiver of temporary/seasonal." In fact, my application was no different than it have even been in that regard. I had a "frequent, unpredictable need for temporary cattle ranch workers," as the ALJ had described it in his order mandating acceptance of my 1993 application.

I resubmitted the application and demanded that DOL accept or reject it. At this point I was not surprised that they rejected it, and I once again embarked on the arduous task of an ALJ appeal.

This time the ALJ appeal took an especially interesting turn. Fortunately for me, the ALJ was aware of an appeal of a denial of a permanent labor certification application filed by an employer named Vito Volpe Landscaping Company for landscape maintenance workers. In the *Vito Volpe* case, brought before the Board of Alien Labor Certification Appeals (BALCA), the Labor Department argued that permanent labor certification was not appropriate because the workers were only employed about 10 months of the year, which according to the Labor Department, was not "permanent." The Certifying Officer argued that *Vito Volpe* should have filed an H-2A temporary labor certification application. In my case, the same Labor Department was arguing that my jobs were not temporary, because they continue through the bulk of the year, even though my workers were not employed the full year, and that I should apply under the permanent labor certification program. The ALJ asked DOL to address the "apparent inconsistency" in its position in the two cases.

Naturally, the Labor Department argued that the cases were different, but they didn't sound at all different to me. They apparently didn't do to the ALJ either. In his Decision and Order granting my 1994 appeal, the ALJ stated "the solicitor's explanation for those two cases is not convincing since it addresses the outcome of the Certifying Officer's decision but does not reconcile the conflicting reasoning the Certifying Officer used to reach those decisions." With respect to my 1994 application the ALJ held that "based on the certified case file and the written submission of the parties and *amicus curiae* in [my 1993] case, the undersigned found that the Maltsberger cattle ranch job opportunities are for agricultural labor or services of a temporary or seasonal nature within the meaning of the statute. The evidence and arguments presented [in 1994] do not change that determination."

Mr. Chairman, in my view the Labor Department's action in my case and the *Vito Volpe* case clearly show that the Labor Department's objective is to deny labor certifications, and that they will use whatever reasoning they think will accomplish that result, whether it is consistent from case to case or not. As an ordinary citizen who is not versed in immigration law, I am just grateful that the ALJ in my case happened to be aware of the *Vito Volpe* case, even though it was before a different adjudicatory body.

Incidentally, it is now four years and two ALJ appeals since I filed my first application for H-2A certification. Notwithstanding the Labor Department's intense campaign to deny me a labor certification, they still have not found a single qualified ranch worker interested in working on my ranch. You should also know that immediately after both ALJ decisions, the Labor Department sent the Wage and Hour Decision in to do a top-to-bottom audit of my compliance. In both cases they found nothing wrong. But it is clear to me that these Wage and Hour audits were intended as retaliation for my filing the H-2A.

Mr. Chairman, as my experience shows, in at least some parts of the U.S. there is a shortage of temporary and seasonal agricultural labor *right now*. My situation is not unique. Many Texas ranchers and their families are struggling to maintain

their ranches and cattle in the face of the reality that United States workers do not want to do this work and have better options. If your bill is enacted and the large number of workers currently working in agriculture with false documents are forced out of the workforce, the situation will become chaotic.

Can you imagine one hundred, one thousand or ten thousands ranchers going through what I have gone through to secure H-2A labor? The current H-2A program is broken, and it is critical that, as we reform the Nation's policies to control *illegal* aliens, we also reform the mechanism for admitting temporary and seasonal agricultural workers into the U.S. We must remove the Department of Labor from the role of "gatekeeper in providing access to needed labor. We need a simple, streamlined admission process which assures employers timely access to qualified workers under reasonable terms. I urge you to include such a radically reformed program in your bill. The livelihoods of your rancher constituents depend upon it.

Mr. SMITH. Thank you, Mr. Maltsberger.

Ms. Mull.

**STATEMENT OF LINDA DIANE MULL, EXECUTIVE DIRECTOR,
ASSOCIATION OF FARMWORKERS OPPORTUNITY PROGRAMS**

Ms. MULL. I want to thank you for the opportunity to come and talk to you today on this important subject. I represent the Association of Farmworker Opportunity Programs, which is a national federation of farmworker employment and training agencies that provide employment, training, and related services to migrant and seasonal farm workers in 48 States and Puerto Rico through a network of 450 field offices. I just want to make the point clear: we are not the Employment Service, and we are an independent, separate entity who specializes in employment and training services for migrant and seasonal farmworkers.

I want to give you a picture of the type of farmworkers that we're serving. The association has developed a national data base. We've begun the development of a national farmworker data base that houses information about the workers that are trained by the JTPA title IV, section 402, agencies which are members of the association.

We serve approximately 45,000 farmworkers each year. About 15,000 of those farm workers are placed into full-time, year-round jobs in agriculture and not in agriculture. We place people into jobs based on quality standards that are driven based on wages, benefits, full-time, year-round employment, and growth potential within those jobs. That leaves approximately 30,000 farmworkers who come to us because they're seeking employment, but under the JTPA 402 system we're not allowed to place people back into seasonal agricultural jobs, but we are able to help stabilize their agricultural employment. Therefore, what we do is assist them through referral to the Employment Service and we provide them transportation assistance, gas monies or a bus ticket, food assistance, temporary housing assistance, in order to assist them to move on to find other agricultural jobs or to remain in a local community until agricultural jobs become available.

Under this program, and based on about 18,000 records that we have within our system today, of those 30,000 farmworkers, their average number of weeks employed are less than what we've heard earlier. The average weeks for these individuals who have come to us seeking employment in agriculture is only 19.5 weeks of employment, severe underemployment. Their gross annual pay is about \$3,900; 61.4 percent are long-term agricultural employees. They

have been working in agriculture more than 4 years. Twenty-one point one percent are unemployed at the time that they come to us seeking assistance. After they've come to us, if we can't help them through referral to the Employment Service to find another job, they become unemployed. Thirty-seven percent of the migrants are limited in English; 20 percent of the seasonals. Their average education level is about 8.4 years. Reading skill level is around seventh grade; math skills around fifth grade. Twenty percent are on food stamps, and about 12 percent are on AFDC. These are not people who are relying on public assistance. These are the farmworkers who want to stay employed. They have a strong work ethic and they are the domestic farmworkers who are out there year after year.

Basically, the position of the association is that we believe it's time to invest in America's farmworkers and in all sectors of agricultural industry who need labor. Right now there's about 1.9 million farms, about 700,000 agricultural employers, who hire workers. We have 3,000 employers who utilize an H-2A program. Therefore, we're financing a program for 3,000, which is a very small percentage of the total employers within agriculture. And somehow those other 697,000 employers are able to find their labor force and take steps to be able to do that. It would seem reasonable that we should be able to meet the needs of 3,000 employers without expanding the current H-2A program or creating a new guest worker program.

I don't want to reiterate a lot of the rationale that other folks have said earlier today as to why we do not need a guest worker program. We do believe there is a surplus of farmworkers and not a shortage. Our own data shows that we have 30,000 farmworkers who are ready and available and are legal, authorized to work residents of the United States who want to work in agriculture. They're ready and available, and they're experienced and skilled. We have their detailed work histories. I did a cross reference to look at the types of crops that they have work skills in, and if you correlate it to the H-2A commodities, tobacco, tomatoes, apples, livestock, cucumbers, across the board we have percentages of those workers who are skilled workers in the commodity areas of which H-2A employers have filed applications.

We also know that the farmworkers we serve are about 45,000 of the 75,000 pool of ag workers in ESQ because we refer our clients to the Employment Service. We think there's a lot of options that could be undertaken with this particular program, and we haven't heard a lot of options today. I just want to focus on a couple of those.

One option is to improve what the Employment Service is doing, improve the recruitment efforts of agricultural employers, utilize data bases that have been established that house information about labor contractors, that house information about independent workers, maximize the efforts of the resources to focus in on linking agricultural employees with agricultural employers, so that you can maximize and increase the length of employment of workers within agriculture. Poverty within agriculture amongst farm workers is driven on the basis of seasonal agricultural employment. There's low wages, yes. There's lack of benefits. There's lack of

labor standard protections. But if we could match employers with the workers, I think we could maximize the use of limited tax dollars and get more of an investment from the use of limited resources.

Thank you very much.

[The prepared statement of Ms. Mull follows:]

PREPARED STATEMENT OF LINDA DIANE MULL, EXECUTIVE DIRECTOR, ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAMS

Before I begin my testimony on the current H-2A Agricultural Guestworker program, and the wisdom of expanding it or providing for a similar program with increased scope, I would like to thank the members of the subcommittee for this opportunity to appear before them and be heard on this important topic.

The Association of Farmworker Opportunity Programs (AFOP) is the national federation of farmworker organizations and agencies providing employment, training, and support services to 45,000 migrant and seasonal farmworkers through 450 field offices operating in 48 states and Puerto Rico. On behalf of our members and the millions of farmworkers who form the first building block of American agriculture, I can assure you that the topic for which you convene this hearing is critical to their future and the future of America's agricultural industry—our nation's largest industry.

Since its formation in 1972, AFOP has worked tirelessly on behalf of farmworkers and our member organizations that have assisted thousands of farmworkers to break the cycle of poverty and dependency that often stretches across several generations. We help farmworkers by providing employment training, and related services that assist them to secure full-time, year-around employment both within and outside of agriculture and enables them to achieve self-sufficiency and independence. As dictated by our federally sponsored mission, our member organizations—operating in the heart of America's farming regions—provide these services through funds made available under the Job Training Partnership Act, Title IV § 402.

Now, with the approach of AFOP's 25th anniversary, I can remember no other time when the challenges before farmworkers and the agricultural industry so dependent on their labor were as great as they are today. Whether it be because of NAFTA—opened floodgates of foreign produce or the necessity of cutting programs upon which both farmworkers and farmers depend (like job training and educational services, food stamps, and farm subsidies), the challenges before us today in keeping America's largest industrial sector healthy and profitable are immense.

Data contained in AFOP's national farmworker database clearly shows that farmworkers suffer high rates of unemployment, severe underemployment, low earnings, and face many employment barriers. The data on 17,944 farmworkers served by the JTPA § 402 program contained within the database shows the following: the average weeks worked was 19.4; the average gross pay was \$3,927; 61.4 percent had long-term agricultural employment; 21.1 percent were unemployed at the time of their application; more than 37 percent of migrants were limited in English, 20% for seasonal; the average grade completed was 8.4; the average reading skill level is at the seventh grade; the average math skill level is at the fifth grade; 20 percent receive food stamps, and; 12 percent receive AFDC.

My position on the current guestworker program and any attempts to expand or replace it with a larger program is very simple. After an unprecedented wave of Congressional activity to throw American farmers and farmworkers into a global economy built on cheap labor and lower cost production, it is quite simply time to make an investment in America's farmworkers and all sectors of agricultural industry who need labor, not just the 3,000 or so using the H-2A program. Instead of continuing to let production investment move out of America and foreign labor to move in, why not examine ways to improve our capacity as a nation to match U.S. farmworkers and growers and boost their productivity?

But before examining ways that we can improve our domestic capacity to harvest our crops, it is important to discard arguments that there is a shortage of available farm labor and that raising farmworker wages will unacceptably add to the cost of food products. First, all facts point to a surplus of agricultural labor, not a shortage. For example:

The Commission of Agricultural Workers, formed under the Immigration Reform and Control Act, conducted studies to determine whether a labor shortage existed within the U.S. Both the Departments of Agriculture and Labor were involved with the studies, and results consistently showed a surplus of legal, domestic agricultural labor within the U.S.

In congressional testimony, Dolores Huerta testified that in over two years of hearings before the Commission on Agricultural Workers on which she served, not one grower ever testified of a labor shortage;

Employment Services data in each of the largest H-2A states shows a large pool of legal farmworkers registered and available to perform agricultural services.

Requests for H-2A workers has declined over the last few years, dropping from a peak of 26,600 in 1989 to 15,500 in 1991, according to DOL;

AFOP's own national JTPA §402 service data validates the availability of 18,000 farmworkers in only 17 of our 48 states, all of whom are legally authorized to work, skilled in harvesting, and available to work. These workers suffer severe underemployment averaging only 19.5 weeks of work per year in agriculture.

Growers have also expressed fears that many farmworkers now working in U.S. agriculture are doing so illegally and would be subject to deportation when new tougher enforcement measures take effect mirror those voiced in 1988. Those fears resulted in Congress enacting the current H-2A program and the Replenishment Agriculture Workers (RAW) program. The fears were proven to be unfounded, but not before the taxpayers footed the bill for the H-2A program, the RAW program, the Commission on Agriculture Workers, and the National Agricultural Workers survey (NAWS). Although the Commission and the NAWS has provided some valuable results, the costs have likely exceeded \$80 million and here we are seven years later right back where we started. Farmers are still worried about finding good workers and domestic farmworkers are still worried about finding good agricultural jobs. Simply put, there are already enough legal, registered, and willing to work farmworkers in the U.S. We don't need a new guestworker program!

Supporters of the H-2A guestworker program also claim that raising farmworker wages and providing equal labor standard coverage to attract and keep good workers would unacceptably raise the costs of agricultural products. But according to Dr. Phil Martin, an agricultural economist at the University of California, farmworker wages could be doubled without any appreciable rise in the cost of food products. After examining 1990 figures depicting the amount Americans spent on food, Dr. Martin discovered that doubling farm wages, and thus practically eliminating farmworker poverty, would raise retail food prices by less than 10 percent. This doubling of farm wages when passed on to the consumer amounts to an increase of only 3 cents per day in food costs.

These facts leave only one question—how do we connect workers who have crop specific skills with growers who need them and further develop the capacity of domestic workers to do the jobs growers are using H-2A workers to perform? Even if there are occasional farm labor shortages, it is preferable to build a domestic, productive work force rather than continuing the wasteful practice of bringing in foreign workers. Continuing to displace America's farmworkers will cause them to remain in poverty and keep them from moving into a more productive, self-sufficient status during their working years. Farmworkers will earn less money, pay less taxes, and rely more deeply on social programs.

To begin to look at ways that growers who use H-2A workers and growers at large can obtain readily available farm laborers and develop their capacity to productively and efficiently harvest crops, it is necessary to examine the standard operating procedure of America's growers. Quite simply, unlike most of American business, many sectors of American agriculture do not utilize modern labor management practices and diversification to address changing global markets. Many growers invest little or no capital into effective recruitment and retainment measures, and expand considerable energy to escape responsibility for their own work forces. This hands-off management style is best exemplified by the practice of using labor contractors to obtain workers.

Labor contractors are generally paid according to the quantity of workers they recruit and not the quality, which results in contractors throwing as many workers as possible into the fields and seeing how many will last until the crops are harvested. Instead of taking some control and responsibility for recruiting their own workers and then instituting some training and retention measures, including higher wages, designed to ensure that better qualified, better trained, more productive workers return year after year, many growers start from scratch with new untrained workers every growing season. Where else in business America does the employer start every production cycle unaware of the skill level of the workforce, not knowing whether their workers will need to be taught anew how to do their jobs? Does this business practice make any sense?

Why is it necessary to recruit, train, and retain productive farmworkers? Although farm work is often characterized as unskilled labor, the job requires stamina, special talents, and knowledge about the commodity or livestock. The work requires physical stamina—10 to 12 hour days working as fast as possible in a stand-

ing, stooping, or crawling position. It involves talents—special hand manipulation so as to pick the commodity quickly while testing it for ripeness and avoiding bruising. It takes knowledge—knowing the commodity, the best approach to harvesting quickly and effectively, being aware of what to pick and what to leave, and avoiding damage to the plant or tree while escaping personal injury during the process.

Make no mistake, not everyone can do farm work. This is why it is so important to develop and retain a capable, efficient work force instead of bringing in foreign workers. The alternative is to continue investing in agricultural guestworker programs that do nothing to bring agriculture closer to the kind of profitability it must have to stand against foreign produce flooding America today due to NAFTA. We have a very valuable resource in America—our domestic farmworkers. There are a group of individuals whose occupational goal is to do farm work, not to work professions. We know this because through the JTPA program, more than 30,000 farmworkers are provided jobs each year helping them to stay in agriculture.

The basic question facing us today is, are we willing to continue to pay taxpayer money to bring in H-2A workers, displace America's domestic farm work force, perpetuate the workers' cycle of poverty and dependence now and in the future, or are we going to demand that the agricultural industry modernize and help create or utilize some type of recruitment, training, and retainment system that has a greater potential for deficit reducing outcomes?

Why is it so hard for growers or farmers to find farmworkers when they need them? Often it is the nature of agricultural employment itself. Part of the problem is that most of the agricultural work occurs during a six-month period between May and October in upstream states and between November and March in the homebase states of California, Texas, and Florida. This means that the demand for labor is more likely to occur at the same time. However, this problem still does not justify the need for the current or an expanded H-2A program and this factor can be overcome.

As I will be discussing in a few moments, improving the process of matching workers to jobs is the key to avoiding labor shortages in some areas and labor surpluses in others. The level of recruitment effort that must be undertaken to get the word out to farmworkers requires much more than simply advertising in the newspaper once or twice in English or Spanish, posting a flyer at the farm, or listing the job with the Employment Service.

Recruitment of farmworkers for participation in any program is a difficult process and requires concerted, multi-level strategy outreach—efforts that farmworkers organizations are willing to undertake but that many growers are not. To reach farmworkers, extensive outreach must be conducted, and it must be done with a thorough knowledge of the targeted community. The most effective method is through one-on-one personal contact. The use of radio ads targeted at certain times through stations oriented toward rural Hispanic communities is also a far more effective method than utilizing a newspaper ad.

Networking through the numerous farmworker programs, including JTPA §402, migrant head start, migrant health, migrant education, and migrant legal services to get the word out about employment opportunities can also be effective. However, caution must be taken to ensure that an oversupply of labor in a geographic area does not occur. Likewise, financial assistance to help workers get to the work site and a commitment by the grower for a job when workers arrive is critical. Additionally, ensuring that sanitary housing is available is essential.

It is important to take note of several other practices that present significant obstacles to the goal of helping growers find, train, and retain farmworkers and thereby increase productivity and profits. Because growers in many cases already operate with a very slim profit margin, the feasibility of asking them to commit scant financial resources towards the creation of effective recruitment and retainment measures and raise wages may be unrealistic. In an ideal world, the large multi-national processors that dictate to an overwhelming degree what growers earn from their crops would make these needed investments. But as we have seen through large-scale lay-offs and consolidations, rapid relocations and large investments in lower wage, unregulated countries, this is unlikely. We cannot expect bottom line motivated multi-national corporations to help growers become more profitable by helping them recruit and retain productive workers by providing direct assistance for this purpose or better, fairer growing contracts.

So who will take responsibility for the farmworkers and invest in their recruitment, training, and retainment, eliminating the need for H-2A workers? Unfortunately, farmworkers are truly a constituency without representation. Most growers do not take responsibility for their workers and continue to use labor contractors. Corporations seem more interested in maximizing profits than helping growers become more profitable. Because farmworkers are most often migratory and do not

satisfy many voting residency requirements, they do not vote and so enjoy little voice in government. But the true constituency in this issue is not only farmworkers, but the U.S. grower, taxpayer, and consumer. Our inability to create an environment of increased profitability in agriculture and eliminate the need for foreign workers is adversely impacting them all. If not the grower or the corporation that buys their crop, who will take responsibility for the farmworker and make this needed investment designed to create a more profitable agriculture industry?

Plainly, Congress has taken a lead position in making this kind of investment by enacting an H-2A program that temporarily remedies but does not cure the problem because even after using foreign workers the conditions that created their necessity still remain. In addition to the taxpayers' cost of the H-2A program, the taxpayer is supporting a subsidy for agricultural industry established by exempting employers from making social security, unemployment and workmens' compensation payments into the U.S. system on behalf of H-2A workers.

Currently, growers participating in the H-2A program pay a \$100 certification fee and ten dollars per worker up to a maximum of \$1,000. According to DOL estimates, the Department spends approximately \$10 million each year administering the H-2A program. In effect, the federal government is spending more than \$600 to recruit each worker, while the grower is paying about \$10 per worker to offset these costs. Using numbers supplied by DOL, it would appear that the H-2A program brings in less than \$500,000 in revenue to offset the \$10 million administration costs. This is an expensive program.

Additionally, untold millions of tax revenues are lost through wages that flow out of the country, are not circulated in the U.S. economy, and are not subject to taxation. Instead of providing a subsidy for U.S. growers to use foreign workers, why not help growers access, train, and retain domestic farmworkers, whose wages, taxes, and labor stay in the U.S. economy, can contribute into a system providing for their retirement, and whose productivity could reap some of the untold millions that poorly trained foreign workers leave rotting on the vine.

How can this be accomplished? One option is to utilize the Employment Service to fill job orders. This is a current practice used under the H-2A program and, unfortunately, continued to result in 15,000 foreign workers being brought into the country. This occurred despite there having been large numbers of farmworkers registered with the Employment Service in several of the larger H-2A states.

A second option is for both agricultural employers and Employment Service to facilitate a more concerted effort to recruit farmworkers. More effective social marketing strategies could be implemented that have proven to be effective for farmworker programs and would be both cost effective and time efficient for agricultural employers. Sharing job orders with farmworkers service providers could help to facilitate the spread of information about job availability within the farmworker communities. This recruitment must be coupled with a means of transportation, perhaps the establishment of a transportation loan fund, and the availability of adequate housing.

A third option would be to utilize the JTPA §402 program to provide the same employment development techniques used with farmworkers seeking non-agricultural jobs with those farmworkers seeking agricultural employment. JTPA §402 legislation currently prohibits programs from placing farmworkers into seasonal jobs that do not pay \$7 an hour and provide benefits. However, if we could use the same resources currently being used for the H-2A program with the JTPA §402 program, the same level and quality of employment development services currently provided to farmworkers leaving agriculture could be directed to specifically offset the 15,000 H-2A workers required last year. However, it would not be reasonable, given the recent reductions in JTPA §402 funding, to apply an additional burden of service without authorizing and appropriating the necessary funds.

These options would also require the use of a national farmworker database that would facilitate growers' effort to locate crop-specific, skilled workers, ready and available for employment. Being able to find and track farmworkers in the first step towards effective recruitment, training and retainment of productive workers. The U.S. Employment Service has developed a database that contains information on registered farm labor contractors. AFOP's national database maintains information on individual farmworkers who have been served or are currently being served by JTPA §402 grantees.

AFOP's database currently contains records on 18,000 farmworkers from 17 states, is updated weekly by the JTPA §402 programs currently active, is accessible by JTPA §402 field offices throughout the U.S. through an 800-number, and contains detailed work history and demographic information regarding each individual farmworker. In its second year of development, the database is scheduled to add 15 additional states in 1996 and the balance of the country in 1997.

All this leads to one inescapable conclusion. Not only should we not expand H-2A or replace it with a larger agricultural guestworker program, we should eliminate H-2A altogether. It's not needed, it's wasteful, and it's costing the U.S. millions of dollars in lost revenues and it's delaying long-range solutions to the challenges facing agricultural industry. We suggest that it is more economically feasible to invest in domestic farmworkers and help them become productive, year-round, tax contributing employees. Employment and training dollars spent have a more immediate return on the investment. The investment needed to move an individual from revenue draining to tax contributing status can be repaid in five years. This is a permanent return on taxpayer investment, as opposed to the current situation under H-2A.

Beyond these purely economic reasons for terminating H-2A are the dark reports of worker abuse in the program. According to Delores Hueta's testimony before the Senate Judiciary Subcommittee on Immigration on September 28, 1995, H-2A workers sometimes endure harsh working and living conditions in a state of near peonage because they have absolutely no leverage to deal with sponsoring growers who can send them back to their own countries without paying them if the workers complain or present any problem.

Lately, the country has been swept by the acknowledgement that we must invest more wisely and efficiently and cut wasteful spending. We cannot continue to spend money on measures that are counterproductive and do not bring us any closer to crucial national goals. While we have major differences in the country today on how to cut government spending and consolidate and efficiently spend dwindling federal dollars, everyone is in agreement that it must be done. In keeping with these vital goals, we cannot continue to fund programs like H-2A that are wasteful and take limited investment away from our people and would otherwise be unnecessary if targeted in the right direction.

Therefore, I encourage you in the strongest terms possible to refrain from expanding the H-2A program and to look for ways to eliminate it. Since we are already making an investment in providing growers with workers, even though it is the wrong kind of investment and is providing little if any return, why not shift the emphasis towards helping growers recruit, train, and retain domestic workers. The wisdom of this policy should be clear.

If we cannot find a way to fund a system that would help growers find, train, and retain U.S. farmworkers, and thereby boost their productivity, then we should do what Secretary Reich has suggested and require growers using the H-2A program to fully pay for the program. I would also suggest that processors be required to contribute to such a fund. Not only are they better situated to make such an investment, but as the greatest benefactor of cheap farm labor with the greatest profit margin, it is only right that they do so.

In closing, I would like to remind the members of the subcommittee, some of whom were involved in the efforts of the mid 1980's to put together and pass the Immigration Reform and Control Act, of the promise made by the agricultural community in exchange for legalization of large numbers of farmworkers who picked their crops. In exchange for this provision in IRCA, which like H-2A was a submission to agriculture's stated need for access to farmworkers, the agricultural community promised to better care for its workforce. Clearly, and by anyone's definition, this has not happened. Farmworker wages have not risen, living and working conditions are still abysmal, and agriculture still remains committed to the large scale use of labor contractors in an effort to avoid any responsibility for its work force. The promise made in exchange for the increased access to farm labor granted by IRCA has not been honored. Before you entertain any ideas of enlarging H-2A, remember this unfulfilled promise. Instead, why not issue a loud and firm call to agriculture to start taking care of it workforce and start employing some means to find, train, and retain a productive workforce?

Thank you again for the opportunity to be heard on this issue. It would be my pleasure to answer any questions you may have and to further explain how we can make a better, more appropriate investment in American agriculture.

Mr. SMITH. Thank you, Ms. Mull. We appreciate that.

Mr. Maltsberger, let me direct my first question toward you. I might say, and you might not be surprised to hear, that coming from Texas and, in fact, having some family ties to south Texas ranchers, I've heard your tale many times myself, and I sympathize with you. I have had a lot of rancher friends try to find someone to, for instance, help them work cattle, and if you live in a small

town or if you live miles away from a small town, it is not easy to find someone who can ride a horse, who can work cattle in the proper way you need to work cattle, and that's why I think that to a lot of people, particularly those who are ranchers, the H-2A program seems to be unworkable. But I appreciated what you had to say.

Do you have any quick suggestions for how we might streamline the H-2A program to make it more workable? Obviously, the needs of ranchers are sometimes different from the needs of, say, California growers, but in what two or three ways would you streamline the program to make it more efficient?

Mr. MALTSBERGER. I would recommend going to the attestation process, taking the Department of Labor completely out of it. Mr. Chairman, they were high-handed, inconsistent, arbitrary. While they were routinely granting labor certification to members of the Western Range Association in 11 States, out of from five to seven USDOL regional offices, they refused to grant those same certifications to Texas ranchers. There's no consistency between regional office and regional office. They did not treat me fairly. They were hostile. When my first case file went to the administrative law judges, they took the most pertinent documents out of it. They have been a regrettable experience all of the way.

Mr. SMITH. Thank you, Mr. Maltsberger, and thanks for bringing those files. That's a graphic example of what you've had to go through.

Mr. Goldstein and Mr. Schacht, both of you have talked about the labor surplus that you feel is in existence. Mr. Goldstein, you referred to the oversupply. Mr. Schacht, you pointed out the number of unemployed in various counties in California.

My question for you all is that, clearly, the unemployed are not all qualified to—let's just take California, Mr. Schacht, since you mentioned California—to work in the fields of California. I've heard many personal instances myself where a grower, for example, would recruit 10 individuals who said that they were willing to work. Five would show up. Of those five, one would last more than noon the first day that they were working, and that's assuming that they could do the job. So you have, I think, a real problem with individuals who are on paper available to work and individuals who will actually work, and we talked about that earlier today, the requisite work ethic.

You also have, in my opinion, a problem with individuals who may not be able to have the skills necessary to do the work. Earlier reference was made about planting onions, and while most of us in the room would probably be able to pull that off, or at least pull it off for a few hours, I'm not so sure that most of the individuals in the room would be willing to climb the 25-foot ladder and pick avocados. I know I'd have some trepidation myself.

Doesn't that, in effect, cut down on the oversupply? Many individuals may be technically eligible to work, but either lack the requisite work ethic or the requisite skills.

Mr. SCHACHT. There's a lot there, Mr. Chairman. Let me just say that the unemployment rate for farm workers in California officially is 13 percent; the State rate is between 8 and 9. The rates in some of these primarily agricultural counties approach 30 per-

cent in the offseason. Admittedly, all of the workers who show up for jobs don't pan out, but in California you have 650,000 seasonal agricultural——

Mr. SMITH. Someone there is going to be qualified, you think——

Mr. SCHACHT. There's a very large surplus, and we'd like to extend to the committee and to you and the staff the opportunity to come to California and see a different California, California in the Central Valley where there's a tremendous oversupply, where there's enormous poverty, where there's overcrowding in every labor camp and every garage in rural counties. You will see for yourself and hear the stories of people who are working 6 and 8, 10 weeks a year, instead of 20 or 30 or 40, as they could if the industry were organized to put those jobs together, stagger its plantings. There's a lot that the industry can do to make the jobs more attractive that it hasn't done. And one of the reasons it doesn't have any incentive to do that is there's a huge oversupply that makes those kinds of changes economically infeasible.

Mr. SMITH. Thank you.

Mr. Goldstein, would you respond as well? And, also, if you will, address the specialized nature of the work. Let's just conjure up in our imagination for a moment the typical migrant farmworker in California who might go from crop to crop, be forced to leave family and friends, literally be a migrant in the exact definition of the word, plus the all-day labor, the bending over, the lifting, perhaps with additional skill requirements. Do you still feel that, given all this, there's still an oversupply of workers?

Mr. GOLDSTEIN. Yes, but I'm not a statistician or a labor economist, although I took some courses in those things and I have a major in industrial labor relations.

These studies over the last 10 years or so about the agricultural labor supply are incredibly comprehensive and authoritative and the results are consistent. So there just doesn't seem to be any doubt that, among agricultural workers who do seasonal work and among a subset of those who do migrant work, there is not enough work. There is very high turnover. The large majority of employers, as the Commission on Agricultural Workers said, which was dominated by agricultural representatives, has not felt the need to modernize their labor practices in order to stabilize their labor force.

I was reading one Florida agricultural company's manual. They were featured in "Legacy of Shame," which was the CBS followup to "Harvest of Shame," just last July. Dan Rather did this nice thing of how this was kind of a model company.

Well, what did they do? First of all, they paid better than most people do. And, second of all, it turns out that they, themselves, have made connections with growers in Virginia and elsewhere that also pay pretty well. So their farmworkers go to another grower after they're done working for that Florida grower, and that sets up enough employment for these workers so that they can do all right, and then they return the next year to that grower, instead of this in and out.

Getting to the skill question, if skill was such a big issue here, you wouldn't see growers utilizing labor practices that encourage such high turnover. I mean, everybody pretty much agrees that most agricultural labor jobs are, by definitions that we ordinarily

use, unskilled; that is, it takes great tenacity and energy and stamina to do many of these jobs, but the educational background and the actual skill level that you have to develop in the way that we usually define skill is not high at all.

Mr. SMITH. Yes. We're not talking about high-tech skills; we're talking about just hard work.

Thank you, Mr. Goldstein.

Let me go to Mr. Becerra, and if we have time, we'll resume.

Mr. BECERRA. Thank you, Mr. Chairman.

Actually, let me follow up on that, that particular point that Mr. Goldstein is making, and ask Mr. Holt: first, explain—talk to me as a Member from California where we have in California about 8 to 9 percent unemployment. As we've heard, in the agricultural setting we have unemployment of between 12 and 15 percent, 15 percent for agricultural workers and in many counties way above that. Why would I want to support a program that imports foreign workers to work where we know that there's high unemployment, and specifically in the area where we're importing the workers, there's even more unemployment than in the average or general U.S. population?

Mr. HOLT. Well, Congressman, the answer to that—there's a two-part answer to that. The first has to do with what the relationship between unemployment and available labor is. In any seasonal industry—and agriculture is probably one of the most seasonal industries—the unemployment statistics are going to show high levels of unemployment because at many times of the year and in different times of the year in different commodities in different areas there are going to be people for whom the season is ending. So it's not surprising that we find “high levels,” quote, unquote, of unemployment. That does not necessarily translate into people that are available to work in the season when they're needed.

Mr. BECERRA. Let me stop you there because the testimony by Mr. Fraser from the Department of Labor was that, even during peak periods, at most, he said 60-some-odd and 75 percent or so of farmworkers being employed. So you still have less than 75 percent utilization of the laborers that are available to do farm work.

Mr. HOLT. I don't think that was Mr. Fraser's testimony. I think when he was talking about 75 percent, he was talking about the proportion of the work force that said they were documented versus the proportion of the work force that said they were not documented.

Mr. BECERRA. No, no, his testimony was precisely that.

Mr. HOLT. Well, then, I would take issue with it because I just don't think that's correct. I don't think the statistics would support it.

Mr. BECERRA. OK, and what's the basis of your taking issue with what he said, his numbers?

Mr. HOLT. Well, I'd like to see his numbers. They don't—I don't think they would be borne out by the data.

Mr. BECERRA. Mr.——

Mr. HOLT. I said there was——

Mr. BECERRA. I'll get back to you, Mr. Holt, but——

Mr. SCHACHT. I took notes when he testified. He said 36 percent were employed in January, and then peak farmworker employment in June and July, 61 percent were employed out of a—

Mr. HOLT. Well, that was an entirely different—he was referring to that chart in his testimony. That was an entirely different thing.

Mr. SCHACHT. That's farmworker employment by month.

Mr. HOLT. He was not talking about 40 percent unemployment.

Mr. BECERRA. Mr. Holt's actually correct in terms of the 75-percent figure, but actually it hurts you because the actual number is 61 percent of farmworkers are employed in farmwork during even the periods of high demand. So it's even worse than 75 percent.

Mr. HOLT. No, Congressman, it's not worse in the sense that the people who are not employed were not unemployed in those—in that table. You'll notice that 61 percent of people who were labeled as farmworkers, by whatever criteria, in that table were employed in farming at the time in those months. Another percentage—and I can't tell you from memory what it was—were employed in non-farmwork.

Mr. BECERRA. Twelve percent—

Mr. HOLT. Another percentage of them were out of the country. And so there was—there was some remaining percentage which was less than the difference between 100 and 61 that were not—that were in the country and not working.

Mr. BECERRA. That's 15 percent. When you factor in 61 percent during peak periods that were working in farmwork, the 12 percent that were working but not in farmwork, and the 12 percent that were not in the country who were abroad, you still have 15 percent who are not employed. So say it's only 15 percent.

Mr. HOLT. You're saying 15?

Mr. BECERRA. That's what—

Mr. HOLT. OK. Well, there's a vast difference between 15 and 40.

Mr. BECERRA. True, and there's a vast difference between 15 and 0. There's 15 percent unemployment even during peak periods. So why should I—

Mr. HOLT. Well, that doesn't say unemployment. That's says not working. Now whether a person is unemployed or not depends on whether they—

Mr. BECERRA. Are working.

Mr. HOLT [continuing]. Are interested in—no, as you know, unemployment statistics define unemployment in terms of people who want work, not people who are not working, and there's a big difference between those two. But—

Mr. BECERRA. Let me see if I can get you to focus then, because I have a couple of other questions, on just the issue. If I look at the statistics and if they are accurate, and 15 percent of people, even during peak periods, are not working, whatever that definition is, why would I want to import foreign workers when I see that there are 15 percent even during the peak period of employment in the agricultural industry who are not working, at least certainly not working in the agricultural industry?

Mr. HOLT. Well, because—I think there's two reasons, and let me try to coherently give my answer.

Mr. BECERRA. Be brief.

Mr. HOLT. A significant number of the people, particularly in the California agricultural work force, who are in the work force, we know are working without documents. Now, some of those job slots it may be possible to replace with people who—additional people who can be brought out of the work force. Unfortunately, our statistics also show that there are a good number of people who show up with false documents who, it turns out, are entitled to work in the United States, and I think there's pretty good reason to believe that some of the people who show up in those unemployment statistics are, in fact, also working at peak.

But, in addition to that, you've got to factor in the connection between what jobs people are willing to take and what jobs are available. We've heard testimony here today about the fact, for example, that somebody that is cutting celery is not necessarily interested in a job or able to do a job picking avocados, and vice versa. There's an even more important factor that we haven't really discussed today, and that is the person who is not working at point X, is very often not willing to pick up and move to become a migrant worker in point Y.

And it's really the condition—the most important criterion, besides the work ethic that Bob Vice mentioned, in my view, the most important skill, if you will, or criterion that establishes whether somebody will become part of the active agricultural work force is the willingness to become a migrant worker. We've spent billions of dollars in this country over about 20 years trying to settle people out of the migrant stream. The notion that somehow or other we are now going to double, triple, quadruple our domestic migratory work force, forcing these people to try to move from point A to point B to become migratory farmworkers, I think flies in the face of what our social policy is in this country.

Mr. BECERRA. And I wouldn't quarrel with that. I think you're very accurate there. You're going to find very few people who want to move from point Y to point X, but my concern is, why do we try to get someone from point Z, which is not even within the borders of this country, to come in to point X?

Mr. HOLT. I think the reason for that is because we've got a lot of U.S. jobs at stake at having good jobs for U.S. workers in agribusiness and in farming, at stake in having an adequate supply of workers coming from somewhere to point X to do those jobs.

Mr. BECERRA. I'm not sure I understood that one, but let me move on, if I can. I know my time really has run out, Mr. Chairman. I just have one question of Ms. Mull.

We've heard a lot about the need for skilled workers to go into some of these areas, the agricultural areas, to do the work, and I would agree that there is a need to have someone who knows how to balance himself on a ladder 25, 30 feet high, know which crops to pick, but I know my father when he was a farmworker didn't just pick one crop. He picked a whole series of crops. Then he went on to become a road construction worker, and then he ultimately built a two-story home that we lived in for many years. We learn a lot of these things. You just, I think, as was pointed out with Mr. Vice earlier, you've got to have the work ethic.

What does it take, in your opinion, to train someone who's a farmworker in one particular industry to be able to have the skills

to do the farm work in another industry? And leave aside the work ethic issue.

Ms. MULL. One of the training programs that we operate is agricultural skills upgrade training with agricultural workers who move into full-time, year-round employment. With those who are going to remain in seasonal agricultural employment and labor who would be harvesting, there is knowing the commodity. It takes knowledge; it takes talent, and it takes physical stamina. Just the practice of being able to do stoop or knee-crawling labor for extended period of times, but knowing how to do that in such a way so that you don't incur injury or so that you are working ergonomically with less stress on your body, teaching techniques and skills to do that, teaching techniques and skills of certain types of equipment that are being used or that could be used that are less damaging to the worker, certain types of bags, certain ways to pick up boxes or bins, baskets, and certain ways of lifting or hoisting those over one's shoulder when they're moving them to the trucks in the center of the field.

There's also knowing the commodity, knowing what to pick, when to pick, what to leave, what the feel of the commodity when it's ripe. There's an intuitive sense that a lot of farmworkers have after having worked in the fields for years. We feel that a training program could be developed that would mentor a very skilled, long-term worker in a particular area with workers who have a lot of the basic skills necessary; they have the drive; they have the work ethic; they have the interest, and then be able to match them.

Also, training should include pesticide worker safety, knowing how to protect oneself in the fields, and knowing some of the basics that the work requires. It's understanding what you're going to face before you enter the fields.

Mr. BECERRA. OK, thank you.

Mr. SMITH. Thank you, Mr. Becerra and Ms. Mull.

Mr. Farr, we're happy to have you ask questions, if you so desire.

Mr. FARR. Thank you very much. I appreciate it, Mr. Chairman, for inviting me. I'm not a member of this committee. I'm a member of the Agricultural Committee, and I represent the central coast of California.

What's interesting about this panel is that they all agree that the program is broken; the H-2A program is broken and needs fixing, either eliminated or make it better. What surprises me in the panel is that the problems of Mr. Maltsberger, which are common that you'll hear, is that I have a labor need that can't be filled, and, therefore, you have to turn to this program, and the rest of the panel says there's plenty of workers. You know, if we can match—everybody—Ms. Mull is the only one here that does the matching.

And the point is, can you solve his problem?

Ms. MULL. If I understood exactly what are the skill levels, what are the specific job requirements. With the JTPA 402 program we have some minimum requirements. Does it pay \$7 an hour? Is it full-time, year-round employment? And would he offer benefits? If he says no to that, then we couldn't use JTPA 402 funds to do it.

Mr. FARR. That's because the JTPA law doesn't allow you to place them in agricultural programs—

Ms. MULL. Into seasonal agricultural jobs.

Mr. FARR [continuing]. That have seasonal agriculture.

Ms. MULL. But if—say, if there are resources available to do that, yes, I think we could fill those job needs. If it requires knowing how to ride a horse, if it means knowing how to mend a fence, if it means driving a tractor, you know, spotwelding techniques, things of that nature, a training program could be designed, and we could identify, through the national network, people who could fill those jobs.

Mr. FARR. Assuming that she could place workers without those restrictions, the JTPA restrictions, would you use an agency like that? Would that be better than the H-2A program the Labor Department runs?

Mr. MALTSBERGER. At the wage rate we are required to pay by H-2A, and because of the safety regulations that we have to have in place, we cannot train people for the job. They've got to know that job when they walk in there. To take somebody off the street and put him on a ranch and try to train him how to handle a wild cow that was having trouble calving, deliver that calf, milk the cow out, and keep from getting himself hurt or to keep from hurting the cow, would be very hard.

Mr. FARR. See, I'm—let me—

Mr. MALTSBERGER. That kind of—those kind of people, you would need two or three other people watching to keep him out of trouble.

Mr. FARR. Well, what I'm convinced is that we have the skills in this country to train people to do that, and I think that the difficulty we have here is matching the need with the supply. I happen to represent an area that does about 2.1 billion dollars' worth of agriculture. It's just incredible how much we do, and we do three crops, four crops a year. We don't need seasonal workers. But the Central Valley, right on the other side of the hill which has peak periods for harvesting, they need it. Now it seems to me that we ought to be able to design in this country a program that can employ people without having to say that, no, exactly the skills that you just outlined can only be gotten from people that are living on the other side of the border.

Mr. MALTSBERGER. I'm not saying that they can only be gotten from that. People in our area—let me give you some background.

In the early 19th century—up to 1848, we were in Mexico. Historically, our labor force has been Mexican. During the early part of this century, because of revolutions in Mexico, a lot of good men, a lot of good families came out. They worked on ranches. They were good people. They raised their children. They went to school. Those children have gone on into other industries and other things. We do not have a workforce in south Texas that wants to work on a ranch.

Not everybody can do it. I have five children. One is interested. I have a brother; he's a professor of psychiatry at Harvard. And I think it's something that you have to want to do and you have to know how to do, and I don't think—I think it's almost something that you're born with, not something that you're trained with.

Mr. FARR. My point is that you indicated that you have a shortage of skilled labor to do the particular job that you need and the availability of that labor. You don't really care where that labor comes from as long as it can provide that job.

Mr. MALTSBERGER. That's right.

Mr. FARR. You don't like the program the way it exists. It's much too paperwork, too cumbersome. It's not working for you.

The job that we have in this arena is to try to design something that works. And I'm one that, first of all, I don't believe you should allow any guest worker to work in any State that doesn't allow farmworkers to organize. I think that ought to be a minimum requirement.

And I, frankly, think that we do have a labor force, and using our community college training programs, I think we can train—the problem is we don't do a very good job of marketing these jobs. We've been telling everybody, if you go to school, you ought to be like your brother, rather than go into a business like you've gone in. Go to Harvard and be a professor; don't go out and be and do the hard work in this country. That's why we have a shortage of blue collar workers, of skilled workers, in this country. We need to put more emphasis into it, and I believe that this committee and this Congress can design something. My God, we have the ability to move—the jobs are there. When you're paying a good wage—in the Salinas Valley, yes, we've got problems, but, I'll tell you, there are—the organized valley, the employers are paying medical benefits. They're paying—this is something a lot of farmers aren't doing. They're giving a benefit of—what do you call it at the end?—bonuses, wage bonuses, sharing in the wealth of the corporation; providing housing; providing schooling for kids of the farmworkers, and these are growers that are being able to remain competitive in a competitive market.

And I think the most outrageous statement—I wasn't here, but I got a note of it—was Professor Miller from the University of Delaware indicating that, especially crops like we grow, ought to be done somewhere else.

Mr. MALTSBERGER. If you all could guarantee us the price of cattle, we'd be glad to pay them—

Mr. FARR. Well, we have cattle ranchers in Monterey County as well, and I don't think they rely on imported labor.

Thank you.

Mr. SMITH. Now, Mr. Maltsberger, please, continue.

Mr. MALTSBERGER. If I could I would like to sum up one thing, that I think is being overlooked today in this discussion of statistics and all the need to protect our labor situation. As I've participated in this hearing and as I have seen the background work preparing for it, I feel, the problem is not what the labor force in California is today. With the threat of telephonic verification of labor's ability to work, our growers are concerned about getting their crops in, if we have a new law, containing sanctions, or whatever. On the border of Texas we have been subjected to selective enforcement of the immigration laws since 1986 that you other people haven't seen. If the same enforcement went into California today, there would be a tremendous labor shortage. And I think the growers want a program in place before that happens, so if it does happen, they can tap into it and get their crops out.

Thank you.

Mr. SMITH. Thank you, Mr. Maltsberger.

Mr. BECERRA. Mr. Chairman.

Mr. SMITH. Yes, Mr. Becerra.

Mr. BECERRA. You were about to close?

Mr. SMITH. I was. So go on.

Mr. BECERRA. Hopefully, one quick point, a quick question: actually, it follows the line of questioning by Mr. Farr and is a point I want to explore as well.

Have you been in touch with associations, organizations, like that of Mr. Vice or Mr. Young? It seems you offer them something they could use.

Mr. MALTSBERGER. I've tried to join Western Range Association because they're automatically approved, but they said I couldn't qualify because I was in Texas and they only operate in 11 Western States.

Mr. BECERRA. I was actually directing the question to Ms. Mull, but thank you, Mr. Maltsberger, for the comment.

Ms. MULL. No, actually, we haven't. The level and extent that we've done agricultural skills upgrade training is with employers who have approached us with a need for full-time, year-round jobs. Where that occurred, we sat down with the employer and designed a specific training program, paid for the cost of the trainers to come in, identified in conjunction with the employer the recruitment of the workers, and trained the workers, and then they were placed on the job.

We have within our data base, I was just looking at the data, out of the 18,000, we have 1 percent of the population of that 18,000 who are livestock workers, who specifically worked in livestock on ranches. Now I can't say whether at this point until we go back and look at the individual records, but we have a program operating in the State of Texas. We have 27 field offices in the State of Texas. I would imagine that they're not far from LaSalle County, and that it would be very easy to link our member in the State of Texas with you and be able to see if there is a way that we could fulfill your specific employment needs for farmworkers.

Mr. BECERRA. And if I could ask Mr. Maltsberger, what precisely can you give us—and you already touched on this a bit—what are the skills that these seasonal workers, these H-2A workers are providing? What are the skills that they possessed that cannot—that you've been unable to find in American workers or that the Department of Labor has not been able to provide you?

Mr. MALTSBERGER. Basically, it is the work ethic, and the willingness to stay on a remote ranch for a good period of time. We don't have any Monday mornings; we work straight through. Our men usually work 5 to 6 weeks at a time and take a month off, and that doesn't appeal to most people. We're too far for the people to come and go every day. We cannot provide family housing. Our men live in bunk houses. It is not a Hollywood-type job; it's hard work, and most people today in the United States can get a higher paying, better, and much more desirable job.

And I don't want to give the impression that low pay is the problem. I think if we paid exuberant wages, people would still not care to work under those conditions. And our conditions are not bad. My housing, my kitchen, everything on the ranch is inspected by the Texas Department of Health. Our water supply is certified, and the last 2 years I have gone through two Wage and Hour inspections.

These were top-to-bottom, look-under-the-rug—pulled the men off individually and asked them leading questions in my absence and without my representation. We have passed every test. I would be willing to hire anybody that would do the job, that would go shoulder to shoulder with us.

A lot of people we try to train. Historically, they don't stay. Once you get them trained, they move on. It's a reoccurring problem. In our type of agriculture, turnover is very high.

Mr. BECERRA. Thank you. Sir, I think that's probably a pretty good way to end it then, a bit of, I think, a compliment on the abilities and the ethic of a lot of the folks that have come in who do the work from other countries and a bit of an indictment on some of our own folks in this country who perhaps have gotten a little soft, but I hope that's not reason enough for us to give up on those Americans who are out there and would be willing to do the work, if they could just get connected to the employer.

Mr. MALTSBERGER. Mr. Becerra, hearing your comments today, I think you share that ethic.

Mr. BECERRA. Thank you. I appreciate it.

Thank you very much, Mr. Chairman.

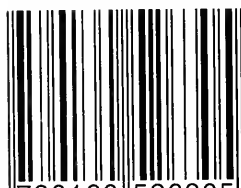
Mr. MALTSBERGER. Thank you for holding this hearing.

Mr. SMITH. Thank you, Mr. Maltsberger. Again, thank you all, members of the panel, for being with us as well. We'll look forward to staying in touch with you.

The subcommittee is adjourned.

[Whereupon, at 4:22 p.m., the subcommittee adjourned.]

ISBN 0-16-052630-2



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